Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 17 | August 10, 1983 | No. 32

This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

U.S. Customs Service

Treasury Decisions

(T.D. 83-154)

Decision Concerning Domestic Interested Party Petition Requesting Reclassification of Certain Glassware

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of decision on petition.

SUMMARY: This document advises the public of Customs decision with respect to a petition filed by a domestic interested party requesting that certain imported glassware should be classified as "other" glassware, rather than as "specially tempered" glassware, and dutiable at a higher rate. The document provides that six of the nine samples that were the subject of the petition are properly classified as pressed and toughened glassware. However, the other three samples are not pressed and will be reclassified for duty purposes.

DATE: Merchandise identified in this decision as having been classified incorrectly, will be appraised and classified at the rate of duty specified in the decision upon entry for consumption or withdrawal from warehouse for consumption after August 24, 1983.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lindmeier, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5727).

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1981, a petition was filed with Customs under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by Libbey Glass Division of Owens-Illinois, Inc. ("petitioner"), an American manufacturer of glassware. The petitioner contended that certain glassware imported by J. G. Durand International ("importer") which has been classified under the provision for glassware which is "specially tempered," in item 546.38, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), is not "specially tempered,"

and thus is properly classifiable under the provisions for other glassware, according to value, in items 546.52 through 546.68, TSUS.

A notice of receipt of the petition was published in the Federal Register on November 12, 1981 (46 FR 55822), advising the public of petitioner's contention and requesting comments on the petition. A notice of extension of time for comment was published in the Federal Register on December 7, 1981 (46 FR 59690).

Discussion of Comments and Issues

Of the 37 comments received in response to the notice, 34 expressed general approval of the petition and requested its adoption.

Counsel for the petitioner submitted a comment which asserted the following:

1. The meaning to be ascribed to the term "specially tempered" in item 546.38, TSUS, is the same as that of identical language in item 544.31, TSUS;

2. Glassware which is merely tempered is not properly classified under item 546.38, TSUS; to be classified thereunder, the glassware must be "specially tempered";

3. Item 546.38, TSUS, requires the merchandise to be pressed; the Durand Grand Vin glasses are not pressed. Other plates made by Durand appear to be produced by centrifugal forming, rather than by being pressed; and

4. Only a breakage test can be used to determine if glassware is tempered enough to be "specially tempered".

Counsel for the importer submitted a comment which stressed the following:

1. Petitioner does not possess standing to file this petition because it is not a manufacturer of tempered glassware of the same class or kind as the tempered glassware of the importer; and

2. The breakage test referred to in Internal Advice (IA) 76/136 is not the sole determinant of whether glass is "toughened (specially tempered)". That breakage test is a test appropriate for flat glass used in vehicle glazing. Although the legislative history, Brussels Tariff Nomenclature, and IA 76/136, do not mention properties of specially tempered glass other than its propensity to shatter upon impact, other tests are useful to determine if glass is specially tempered. Tempered glass exhibits physical changes which are not discernible from an impact test. The test used to determine if flat glass is tempered, is not a test which is properly used as the exclusive test for household drinking glasses because:

a. The shape, thickness, and thermal co-efficient of expansion affect the pattern of breakage of this glass. Thus, a tempered drinking glass because of its shape and thickness may not break into a great many small, round-edged pieces.

b. The meaning of the term "specially tempered" in item 546.38, TSUS, is not the same as the meaning of the same term in item

544.31, TSUS, because item 544.31 describes glass which is very different from the glass in item 546.38.

c. By enacting the TSUS, Congress intended item 546.38, TSUS, to cover glassware which was fully and purposely tempered. "Fully" connotes an article which is tempered throughout.

d. A polariscopic examination of the glass household articles could be used instead of the breakage test in IA 76/136. The polariscopic examination is preferable because it would yield more uniform, easily-administered results.

One other commenter submitted a comment which opposed the petition for the reasons stated below:

1. Since 1962, J.G. Durand & CIE. has exported transparent, molded, and toughened glassware under the name "Arcoroc" and since 1981, the importer has entered opaque, molded, and toughened glassware under the name "Arcopal Restaurant". Each of these types of glass is manufactured by a process to increase its mechanical strength and thermal shock resistance and each type meets the definition of tempered glass embodied in American Society of Testing Materials (ASTM) designation C162–71;

2. The test presently used by Customs, stated in IA 76/136 uses breakage as the sole criterion by which to determine if glass is "specially tempered". Breakage is not the only proper criterion to be used to determine if glass is "specially tempered"; and

3. IA 76/136 indicates that the term "toughened (specially tempered)" denotes a glass which disintegrates into small, round-edged pieces, a test derived from the Explanatory Notes to Heading 70.08 of the Customs Co-operation Council Nomenclature (CCCN). This is incorrect because Heading 70.08 is restricted to flat glass used in doors and autos.

The comments seem to highlight several issues:

—Whether the petitioner has standing to request a reclassification of the subject merchandise;
—The proper definition of the term "toughened (specially tempered)";
—Whether the breakage test embodied in IA 76/136 is the only test to be used to determine if the subject glassware is "pressed and toughened (specially tempered)"; and
—The proper definition of the term "pressed".

In the July 31, 1981, petition, Customs has been requested to determine that nine pieces of imported beverage glassware—Grand Vin (Super Cuvee, Super Savoie, Super Ballon), Artic Stemware (Champagne, Wine, Goblet), and Artic Tumblers (Old Fashioned, Hi Ball, Beverage)—are not properly classified under item 546.38, TSUS. Petitioner's counsel has submitted arguments and breakage tests on each of those nine pieces and other imported glassware as well. Because the scope of the inquiry is defined by the July 31 petition, we will not consider the classification of glassware which is not described in the petition.

Standing

To come within the language of 19 U.S.C. 1516, the petitioner must demonstrate that the merchandise he produces, manufactures or sells is the same class or kind of merchandise as that which is imported. *The Diamond Match Company* v. *United States (Winter Wolff & Co., Inc., Party in Interest),* 45 Cust. Ct. 198, C.D. 2223 (1960); *Star-Kist Foods, Inc.* v. *United States (Bruno Scheidt, Inc., Party in Interest),* 37 Cust. Ct. 171, C.D. 1819 (1956); and *The Golding-Keene Company, The Feldspar Corporation* v. *United States (E. Dillingham, Inc., a/c Rheem Mfg. Co., Party in Interest)* 44 Cust. Ct. 169, C.D. 2172 (1960).

In *Golding-Keene,* supra, the court stated that the class or kind refers to "* * * merchandise * * * sold to the same class of purchasers and * * * used for the same purpose.", at page 173. Customs is satisfied that petitioner's glassware meets that test. Accordingly, petitioner has standing to request a reclassification of the imported merchandise.

Pressed and Toughened (Specially Tempered)

The second issue concerns the proper definition of the phrase "pressed and toughened (specially tempered)". Counsel for the petitioner contends that three of the original nine beverage containers are not "pressed", as evidenced by the fact that each possesses a bulbous portion which is larger than the mouth of the beverage ware, a physical impossibility for pressed glass.

That issue (whether the glass is "pressed") will be discussed below. Counsel also contends that none of the nine beverage containers is "toughened (specially tempered)" because none of them meets the standard for "toughened (specially tempered)" glassware set forth in IA 76/136. Counsel for the importer and another commenter joined this latter issue, contending, *inter alia,* that (1) the beverage ware meets the definition of tempered glass in ASTM designation C162–71, (2) the meaning to be ascribed to the term "toughened (specially tempered)" is not the same as that to be ascribed to the same term in item 544.31, TSUS, and (3) the test in IA 76/136 should not be utilized as the sole determinant of whether an article is "toughened (specially tempered)".

Customs believes that the language in item 546.38, TSUS, is subject to interpretation.

In *Nippon Kogaku (USA), Inc.* v. *United States,* Appeal No. 81–29, February 25, 1982 (Cust. Bull., V. 16, No. 11, pp. 104, 108) the Court of Customs and Patent Appeals was faced with the question of whether a slit lamp microscope was excluded from a tariff provision by a superior heading which excludes microscopes from the provision. In that case, the court stated:

> While we are mindful of the Supreme Court's direction that extraneous aids, such as legislative history, "are only admissi-

ble to solve doubt and not to create it" (cite omitted), we note that the "plain meaning" of the word "microscope" in headnote 1 (ii) contributes little to our understanding of whether Congress intended to exclude all ophthalmic instruments including a combination of enlarging lenses from classification under item 709.05 as ophthalmic instruments.

As the Supreme Court has noted, most recently in *Train* v. *Colorado Public Interest Research Group, Inc., et al.* 426 U.S. 1, 10 (1975):

> "When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination'." *United States* v. *American Trucking Assns.,* 310 U.S. 534, 543–544 (1940) (footnotes omitted). See *Cass v. United States,* 417 U.S. 72, 77–79 (1974). See generally Murphy, Old Maxims Never Die: The "Plain Meaning Rule" and Statutory Interpretation in the "Modern" Federal Courts, 75 Col. L. Rev. 1299 (1975).

We, therefore, find no impediment to review of extrinsic aids to determine the intended scope of the involved classification provision.

Similarly, Customs believes that a review of extrinsic aids is proper to determine the proper meaning of the term "toughened (specially tempered)". Several sources are properly consulted to arrive at the meaning to be ascribed to a tariff provision, including lexicographic sources and legislative history.

According to Webster's Collegiate Dictionary "temper" possesses several meanings: one is "a suitable proportion or balance of qualities * * *, the state of a substance with respect to certain desired qualities"; and "specially" refers to the quality of being special, defined as "distinguished by some unusual quality; esp; being in some way superior * * * readily distinguishable from other of the same category; UNIQUE * * * being other than the usual: ADDITIONAL, EXTRA." "Toughen" is defined as to make tough. In turn "tough" is defined as "strong or firm in texture but flexible and not brittle * * * not easily chewed * * * capable of enduring strain, hardship, or severe labor." Taken together the three terms indicate that the glassware must be stronger than annealed glassware. The fact that the term is "specially tempered" rather than merely "tempered" lends credence to the view that "specially tempered" is interpreted differently than "tempered". This view is supported not only by the definitions of the words, but also by the presumption that each term of a provision has meaning, and that no term is superfluous. Customs also believes that this view is supported by legislative history.

The Tariff Classification Study, C.I.E. 1/64 dated January 2, 1964 (Volume 1), at pages 387–8, states in reference to item 544.31, TSUS, a provision for tempered glass:

> Item 544.31 is a new provision. It covers specially tempered glass that is more resistant to shock than ordinarily tempered glass, and, when broken, disintegrates into small rounded-edge pieces, rendering it particularly adaptable to vehicle glazing. Somewhat lower in cost than laminated glass, it is extensively used as a substitute for laminated glass in the glazing of automobiles. It is currently dutiable under paragraph 230(d) if plain, and under paragraph 218(f) if colored. The proposed rate of duty of 22 percent is a weighted average of estimated current imports.

Thus, the meaning of "specially" can be interpreted in one of three ways. It may refer to (1) increasing the strength of the tempered portions of the glass; (2) increasing the area of the temper itself so that each portion of the glass is tempered, or (3) increasing the amount of the temper and increasing the area of the glassware tempered so that each portion of the glassware has the increased strength and dicing pattern of breakage, characteristic of tempered glass.

Customs is of the opinion that the first view above enunciates the correct standard for a glass properly classified under item 544.31, TSUS. Heading 70.08 of the Customs Co-operation Council Nomenclature (CCCN) appears to support this interpretation.

The question then becomes whether item 546.38, TSUS, and item 544.31, TSUS, are *in pari materia.* If they are, the phrase "toughened (specially tempered)" in item 546.38 should be interpreted the same as identical language in item 544.31.

According to counsel for the importer, the meaning of the language in item 546.38 is different from the meaning of identical language in item 544.31. Allegedly, item 544.31 describes glass which is different from the glass described in item 546.38. Thus the provisions are not *in pari materia.*

Customs rejects this theory. Item 546.38, TSUS, the provision under consideration, is not mentioned as a tempered glassware provision in the Tariff Classification Study:

> Items 546.11 through 546.57—These items provide for glassware used in the household or elsewhere for preparing, serving, or storing food or beverages, now dutiable in paragraphs 218(d), (f) and (g) and 230(d); other household glassware articles (excluding principally illuminating articles), not specially provided for.* * * (at page 391)

However, each of these provisions was enacted as part of the Tariff Classification Act of 1962, Pub. L. 87-456. Sturm, *A Manual of Customs Law* (1976), states at page 168, "The provisions of the (TSUS) must be considered *in pari materia.*" See *e.g., Venetianaire Corp. of America* v. *United States,* 60 CCPA 75, 78, C.A.D. 1084, 470 F.2d 1047 (1973).

> Additionally, the Tariff Classification Study states: The proposal divides the glassware into four general categories—cate-

gories *based on the character of the glass itself:* * * *. (emphasis added) (at page 391)

Customs believes that this language, coupled with the statement in Sturm, above, indicates that items 546.38 and 544.31 are *in pari materia,* and further that the meaning ascribed to the phrase "toughened (specially tempered)" in item 544.31 should be the same as the meaning of the same phrase in item 546.38. Thus, glass classified under item 546.38 also must dice when broken.

Admittedly, the glass in item 546.38 is used to serve food and beverages and is curved. It may be distinguished on that basis. However, Customs does not believe that a distinction is proper in this case. Such a distinction obscures the fact that both provisions describe glass and that the relevant question concerns the physical characteristic of the glass itself, not its use.

The Breakage Test

In IA 76/136, Customs enunciated the test which it uses to determine if an article is "toughened (specially tempered)."

> An annealed (item) * * * should normally break into a small number of larger pieces, say ten or less (frequently as low as three to five): A tempered disk will break into a large number of pieces the number of which depends upon stress magnitude and distribution. If highly stressed the glass will "dice" *i.e.,* break into a large number of small, rather uniformly shaped pieces.

Counsel for the importer contends that the standard is incorrect, apparently because he believes that the language requires toughened glass to dice, such that each portion of the glass breaks into pieces, all of which are small and round-edged. In turn, petitioner joins the issue, stating that each portion of the imported glassware must dice. Because it does not, it is not toughened. Importer's counsel relies upon a 1977 edition of the *American National Standard Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways,* published by the American National Standards Institute.

Customs has studied the samples submitted by petitioner's counsel. This glassware is used in the household. Thus, Customs recently conducted several tests on six of the samples (designated "Artic Stemware", to include "Champagne", "Wine", and "Goblet", and "Artic Tumblers", to include "Old Fashioned", "Hi Ball", and "Beverage"). These tests were designed to simulate the conditions under which household glassware is used. The samples were subjected to three tests, in addition to the breakage test described in IA 76/136:

> * * * A "thermal shock" and a "counter fall" test were performed on multiple samples of all styles and an additional "nesting" test was applied to the tumblers. The thermal shock test consisted of pouring boiling water into the glass. The nest-

> ing test, which was only applied to the tumblers, consisted of stacking glasses as one might for cupboard storage. The counter fall test simulated the accidental knocking of a glass off a kitchen counter.

According to the laboratory report, "None of the imported test samples broke, chipped, or cracked when subjected to thermal shock or nesting. Nearly all of the tumblers survived the counter fall test, while half of the stemware also survived this test."

For purposes of comparison, a quantity of other glassware was purchased and tested. The laboratory report continues:

> By comparison, we evaluated the domestic glassware (both tumblers and stemware) as being resistant to breakage but less resistant than the imported glassware. All domestic glassware tested survived the thermal shock and nesting tests. * * * a higher percentage of tumblers and stemware broke during the counter fall test. Also, considerably less force was required to cause breakage by the center punch test.

Customs has not tested any samples of the Grand Vin Super Savoie or Super Ballon glasses. Subject to this caveat, and with the exception noted below, Customs is satisfied that the samples tested at Customs Headquarters as well as the samples of the glassware illustrated in Attachment 1B of petitioner's July 31, 1981, request to initiate this action are all "toughened (specially tempered)". Although shards of glass as well as the small, round-edged pieces characteristic of a diced glass are present when a sample of glass is broken, Customs is satisfied that this does not preclude the glassware from being "toughened (specially tempered)". This view is supported by page 4 of IA 76/136. There it is stated that the second sample of the merchandise that was the subject of the IA was considered tempered, even though not all of it diced when broken. This view is further supported by the fact that the shape and thickness of the glassware affect the pattern of breakage. These samples are not flat and do vary in thickness from one sample to another and from one portion to another portion of the same article. Accordingly, Customs believes that they are "toughened (specially tempered)", even though they do not break into a large number of small, round-edged pieces without the presence of any shards. The other test results (thermal shock, nesting and counter fall) do not conflict with this conclusion. As to the Grand Vin Super Cuvee, no portion of the sample diced when it was broken.

Pressed

One issue remains. Have the three samples identified as Grand Vin by petitioner, been "pressed"? As stated earlier, petitioner's counsel contends that they are not because the mouth of the stemware is smaller than the largest portion of the inside diameter of the stemware. In an August 16, 1982, letter counsel for the importer concedes that each type of the Grand Vin glassware is not

pressed. Customs considers this concession to be determinative of the issue.

DECISION ON PETITION

In accordance with the foregoing, Customs has determined that the petition should be granted in regard to the imported glassware designated "Grand Vin", to include "Super Cuvee", "Super Savoie", and "Super Ballon", as that glassware is not pressed. In addition, the "Super Cuvee" did not dice when broken. That merchandise is properly classified under the provisions for other glassware, according to value, in items 546.52 through 546.68, TSUS.

However, as to the imported glassware designated "Artic Stemware", to include "Champagne", "Wine", and "Goblet", and "Artic Tumblers", to include "Old Fashioned", "Hi Ball", and "Beverage", the petition is denied. That merchandise has been properly classified under the provision for glassware which is "pressed and toughened (specially tempered)" in item 546.38, TSUS.

AUTHORITY

This notice is published under the authority of sections 516 (b) and (c), Tariff Act of 1930, as amended (19 U.S.C. 1516 (b), (c)), and section 175.22, Customs Regulations (19 CFR 175.22).

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: July 20, 1983.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register July 25, 1983 (48 FR 33792)]

---

19 CFR Part 134

(T.D. 83-155)

Customs Regulations Amendments Relating to Country of Origin Marking

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to establish certification requirements for importers with respect to the country of origin marking of certain articles repacked in the United States after release from Customs custody. This change requires importers to certify to the district director having custody of

the articles that: (a) If the importer does the repacking, the new container must be marked in accordance with applicable law and regulations; or (b) if the article is sold or transferred, the importer must notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements. The purpose of this change is to ensure that an ultimate purchaser in the United States is aware of the country of origin of the imported article.

EFFECTIVE DATE: October 24, 1983.

FOR FURTHER INFORMATION CONTACT: Anthony L. Piazza, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–566–8468).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless expressly excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the article or container will permit, in such manner as to indicate to an ultimate purchaser, the English name of the country of origin of the article.

Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements and the exceptions of 19 U.S.C. 1304. The general exceptions to marking are contained in 19 U.S.C. 1304(a)(3) and section 134.32, Customs Regulations.

Among the exceptions to the country of origin marking requirements are: (1) Articles which the Secretary of the Treasury, pursuant to public notice published in the Treasury Decisions before July 1, 1937, determined "were imported in substantial quantities during the 5-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin" * * * (19 U.S.C. 1304(a)(3)(j)). The full list of articles excepted from the marking requirements under 19 U.S.C. 1304(a)(3)(j) is set forth in section 134.33, Customs Regulations, referred to as the "J-list"; and (2) articles which are incapable of being marked (19 CFR 134.32(a)).

Generally, whenever an article is excepted from the marking requirements, the container or holder in which the article reaches the ultimate purchaser is required to be marked to indicate the country of origin of the article whether or not the article itself is marked (19 U.S.C. 1304(b)).

The "ultimate purchaser", as defined in section 134.1, Customs Regulations, is generally the last person in the United States who will receive the article in the form in which it was imported. It is

not feasible to state who will be the ultimate purchaser in every circumstance. However, the following examples may be helpful:

(1) If an imported article will be used in manufacture, the manufacturer may be the ultimate purchaser if he subjects the imported article to a process which results in a substantial transformation of the article, even though the process may not result in a new or different article.

(2) If the manufacturing process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article, who obtains it after the processing, will be regarded as the ultimate purchaser.

(3) If an article is to be sold at retail in its imported form, the purchaser at retail is the ultimate purchaser.

When an article is imported in the container in which it will reach the ultimate purchaser it is relatively simple for Customs to determine the sufficiency of the country of origin marking. However, a problem exists with J-list articles, and articles incapable of being marked, which are imported in bulk and repacked in the United States by the importer or a subsequent purchaser after release from Customs custody. In these cases, while the container in which the article is imported is usually marked, the container in which the article is repacked for sale to an ultimate purchaser is frequently not. Although the problem appears to be greatest involving steel wire rope, it also involves numerous other articles whose containers are required to be marked.

To minimize the practice of not disclosing country of origin information on the new containers, by notice published in the Federal Register on September 10, 1982 (47 FR 39866), Customs proposed a procedure to require importers of repacked J-list articles, and articles incapable of being marked, to certify to the district director having custody of the articles that: (a) If the importer repacks the article, he shall do so in accordance with the marking requirements; or (b) if the article is sold or transferred, the importer shall notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking must conform to these requirements.

At present, repacked articles do not come under Customs scrutiny because Customs and the Treasury Department have taken the position (based on a restrictive interpretation of 19 U.S.C. 1304) that the statute applies only to articles or their containers at the time of importation. However, this position, and Customs lack of enforcement of the marking requirements after articles are released from Customs custody, has resulted in many articles reaching the ultimate purchaser in unmarked containers, which otherwise should have been marked. Rather than permitting the repacking rationale to serve to frustrate the clear intent of the statute (i.e., to notify an ultimate purchaser of an article's foreign origin), Customs seeks to enforce the statute with respect to repacked arti-

cles by applying the rationale in *U.S. Wolfson Bros. Corp.* v. *United States,* 52 CCPA 46, C.A.D. 856 (1965). In that case the court held that if the article will not reach the ultimate purchaser in the container in which it is imported, then Customs cannot find the marking of the imported container to satisfy the requirement of the statute.

Discussion of Comments

Over twelve hundred and fifty (1,250) comments were received in response to the notice of September 10, 1982. Approximately twelve hundred (1200) commenters favored the proposal; fifty (50) or so opposed it on various grounds. Several commenters made suggestions that Customs believes would increase the effectiveness of the proposal and reduce the administrative burden for Customs and importers.

The commenters favoring the proposal argued that the present regulations fail to implement effectively the purpose of 19 U.S.C. 1304. They commented that if the change is adopted it will be of paramount importance in providing country of origin information to ultimate purchasers, and will reduce the incidences of fraudulent and deceptive practices which have led to unfair competition in many cases.

A commenter representing the Hand Tools Institute, an association consisting of domestic producers of hand tools, suggested that the proposal not be limited to overcoming difficulties which have attended the repacking of unmarked articles, but should also resolve marking problems with respect to the packing and repacking of marked articles, especially where the marking on the article is concealed. For example, various foreign-made tools are entering the United States in bulk, properly marked with the country of origin marking. Once in the United States however, these tools are repacked in such a way to conceal the country of origin marking by placing the items face down in sealed, unmarked blister packs. To correct this problem, the commenter suggested that the certification include language that "any packing or repacking must not obscure or conceal the country of origin information appearing on the articles, or else the outermost container must be marked in accordance with the applicable law or regulation".

Customs believes that this suggestion constitutes a major change to the proposal, which is limited to unmarked articles. Such a change would require additional notice to the public and an opportunity to comment before being adopted. Accordingly, a separate notice will be published in the Federal Register soliciting public comment on the concealment of marking problem as it relates to the repacking of marked articles.

A second commenter suggested allowing the importer to file with the district director at each port where the article is entered a blanket certification to cover all importations of that article for a

given period (e.g., calendar year), rather than requiring a certification for each entry filed.

Customs has adopted this modification because it will greatly reduce the paperwork burden for importers.

A third commenter argued that to require a certification broadly for every repacked article would sweep in many products not intended to be covered by the law and regulations. Therefore, it was suggested that the words "and not subject to an exemption under the act or regulations" be inserted after the word "possession" in the first sentence of the proposed certification, to minimize the situation.

Customs also agrees with this suggestion and has modified the certification to include similar exempting language.

Certain opposing commenters apparently misinterpreted the proposal. They stated that it requires the importer "to ensure that repackers correctly mark each individual package."

The only obligation that an importer has with respect to repackers is to notify them that the country of origin information is required on the new package.

Other opposing commenters claimed that the proposal involves the establishment of a non-tariff trade barrier.

The mere certification that an importer will abide by the marking law, which binds the importer in any event, does not prevent or otherwise restrict importations. It merely ensures an importer's compliance with a rule that now imposes sanctions for its violation.

One commenter opposed the proposal upon grounds that similar requirements are not imposed on domestic industry and its products. The Congress in its wisdom saw fit to require country of origin marking only on articles that are produced in foreign countries. The fundamental objectives of country of origin marking legislation, since the first enactment appeared as section 6 of the Tariff Act of 1890, has been to notify an ultimate purchaser of an article's foreign origin before determining whether to buy the article or its domestic counterpart. This choice was provided in large part because Congress recognized that if given a choice, consumers prefer domestic goods. The failure to provide country of origin information on foreign articles or their containers prevents consumers from exercising this right.

Many domestic food processors objected that labeling requirements would be prohibitive. Customs believes that most of the products concerned will be substantially transformed and therefore will not be subject to the rule. The regulation is intended to apply to articles which are repacked after importation but not to articles substantially changed by manufacture or processing which results in an article having a name, character, or use differing from that of the imported article. For example, meat imported in 60-pound boxes would have to carry country of origin labeling as long as it remained physicially in the form in which it is imported, even if

repacked in smaller size containers. However, if such meat is further processed or combined with other products to make ground beef or other consumer meat products, the processor, as the ultimate purchaser of the meat in the form in which it was imported, would not be responsible for continued country of origin labeling.

Another commenter opposed the certification requirement upon grounds that the Federal Trade Commission (FTC) has the authority to compel marking after articles are imported.

Customs does not believe the rule impinges upon the authority of the FTC. Nothing in the law or regulations should be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law, such as those of the FTC, Food and Drug Administration, and other such agencies. The certification merely attaches sanctions to obligations which already exist under 19 U.S.C. 1304 and Part 134, Customs Regulations. The case cited by the commenter, *L. Heller & Son* v. *Federal Trade Commission,* 191 F. 2d 954 (7th Cir. 1951), is inapposite for the proposition that seeks to bar Customs from promulgating the rule. The court recognized that the two statutes, 19 U.S.C. 1304 and section 5 of the Federal Trade Commission Act, are not repugnant. The court stated that 19 U.S.C. 1304 was "concerned solely with the extent to which the Treasury Department, incidentally to its collection of Customs duties, should regulate the labeling of imported goods."

A commenter for the steel importing community challenged the measure as beyond the jurisdiction of Customs. The point is made that articles entering the domestic commerce after clearing Customs are not susceptible to continuing regulation by Customs.

Clearly, the Secretary of the Treasury has power to attach conditions to any exemption in order to carry out Congressional intent and prevent subversion of the marking statute. As such, the Secretary has announced the certification process as a framework for obtaining compliance with the statute.

A commenter representing a foreign meat producer claimed that the proposed rule is inconsistent with the General Agreement on Tariffs and Trade (GATT).

This is incorrect as the marking statutes antedated the GATT and were not repealed thereby.

Section 134.34, Customs Regulations, provides that an exception from marking under section 134.32(d), Customs Regulations, may be authorized in the discretion of the district director for articles which are repacked after leaving Customs custody and the containers will be marked. One commenter believed that the proposal, if adopted, should supersede the discretionary exemption in section 134.34.

Customs agrees. Since, unless expressly excepted, the marking of the new containers will be mandatory, section 134.34 will be removed.

Customs recognizes that the change will not eliminate all marking problems. However, we are convinced that it is a proper response to an increasing administrative burden. We are hopeful that it will strike a balance between administrative concern for compliance with the marking statute and the desire of interested parties to understand the parameters of their responsibility for satisfying country of origin marking requirements.

Many commenters stated their views on the rule's applicability to specific articles. However, Customs obviously cannot in this document answer all of the questions raised in this context. Such questions should be submitted to the Director, Entry, Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, in accordance with the ruling procedures set forth in Part 177, Customs Regulations (19 CFR Part 177).

After consideration of the comments and further review of the matter, it has been determined to adopt the proposal, with the changes noted above. However, rather than amending section 134.22 as proposed, a new section 134.25 is being added to Part 134 to deal more specifically with the marking of containers of repacked articles which are the subject of this rule.

Executive Order 12291

It has been determined that this document does not contain a "major rule" requiring preparation of a regulatory impact analysis under Executive Order 12291.

Regulatory Flexibility Act

It is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service (202-566-8237). However, personnel from other Customs offices participated in its development.

Lists of Subjects in 19 CFR Part 134

Customs duties and inspection, imports, importers, labeling, packaging, and containers.

Amendments to the Regulations

Part 134, Customs Regulations (19 CFR Part 134), is amended as set forth below.

Alfred R. De Angelus,
Acting Commissioner of Customs.

410-724 O - 83 - 3

Approved: July 18, 1983.
ROBERT E. POWIS,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, July 26, 1983 (48 FR 33860)]

PART 134—COUNTRY OF ORIGIN MARKING

1. Part 134, Customs Regulations (19 CFR Part 134), is amended by adding a new section 134.25 to read as follows:

§ 134.25 Containers or holders for repacked J-list articles and articles incapable of being marked.

(a) *Certification requirements.* If an article subject to these requirements is intended to be repacked in new containers for sale to an ultimate purchaser after its release from Customs custody, or if the district director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the district director that: (a) If the importer does the repacking, the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this Part; or (b) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

CERTIFICATE OF MARKING—REPACKED J-LIST ARTICLES AND ARTICLES INCAPABLE OF BEING MARKED

(Port of entry) ————————————

I, ———————————— of ————————————, certify that if the article(s) covered by this entry (entry no.(s) ———— dated ————), is (are) repacked in a new container(s), while still in my possession, the new containers, unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR Part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date ————————————

Importer ————————————

The certification statement may appear as a typed or stamped statement on an appropriate entry document or commercial in-

voice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular product for a given period (e.g., calendar year). If the blanket procedure is used, a certification must be filed at each port where the article is entered.

(b) *Facsimile signatures.* The certification statement may be signed by means of an authorized facsimile signature.

(c) *Time of filing.* The certification statement shall be filed with the district director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with section 141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this section, the district director may decline to accept a bond for the missing document and demand redelivery of the merchandise under section 134.51, Customs Regulations (19 CFR 134.51).

(d) *Notice to subsequent purchaser or repacker.* If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

NOTICE TO SUBSEQUENT PURCHASER OR REPACKER

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR part 134 provide that the articles or their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article.

(e) *Duties and Penalties.* Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under section 134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592.

2. Part 134 is further amended by removing section 134.34.

(R.S. 251, as amended (19 U.S.C. 66), section 304, 624, 46 Stat. 731 as amended, 759 (19 U.S.C. 1304, 1624), 77A Stat. 14 (19 U.S.C. 1202)).

---

19 CFR Part 148

(T.D. 83-156)

Customs Regulations Amendment Concerning Public International Organizations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to conform to an executive action taken by the President. The document adds the African Development Bank to the list of public international organizations entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act.

EFFECTIVE DATE: July 28, 1983.

FOR FURTHER INFORMATION CONTACT: Richard M. Goodman, Office of the General Counsel, Department of the Treasury, Washington, D.C. 20220 (202-566-8427).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to keep its regulations current, the Customs Service has determined that a recent executive action requires a conforming amendment to a part of the Customs Regulations (Chapter I, Title 19, Code of Federal Regulations (19 CFR Chapter I)).

Discussion of Change

On February 8, 1983, President Reagan signed Executive Order 12403 which designated the African Development Bank as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act, 22 U.S.C. 288 *et seq.*

Section 148.87(b), Customs Regulations (19 CFR 148.87(b)), lists the public international organizations currently entitled to free entry privileges under the Act. To keep the list current, section 148.87(b) is being amended to add the African Development Bank to the list of designated organizations.

Executive Order 12291

Because this amendment will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by section 3 of the E.O. is not required.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 of title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), or any other statute.

DRAFTING INFORMATION

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 148

International organizations.

AMENDMENT TO THE REGULATIONS

Part 148, Customs Regulations (19 CFR Part 148), is amended as set forth below.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

Section 148.87(b) is amended by inserting "African Development Bank" before "African Development Fund" in the column headed "Organization", "12403" in the opposite column under the heading "Executive Order", and "February 8, 1983" in the opposite column under the heading "Date".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

DONALD F. KELLY,
Acting Commissioner of Customs.

Approved: July 5, 1983.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, July 28, 1983 (48 FR 34256)]

(T.D. 83-157)

Approval and discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: July 22, 1983.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
AAA Cartage, Inc., 5938 So. 13th St., Milwaukee, WI; motor carrier; Fidelity and Deposit Co. of MD (PB 4/22/75) D 6/26/83 [1]	June 27, 1983	June 27, 1983	Milwaukee, WI $25,000
ABC Transfer & Delivery, Inc., 700 N.W. 5th Ave., Portland, OR; motor carrier; United Pacific Ins. Co.	Nov. 30, 1982	Dec. 7, 1982	Portland, OR $25,000
Action Airfreight, Inc., 5980 Inkster, Romulus, MI; motor carrier; Great American Ins. Co.	June 9, 1983	June 27, 1983	Detroit, MI $50,000
Arkansas-Best Freight System, Inc., 1000 South 21st St., Fort Smith, AR; motor carrier; St. Paul Fire & Marine Ins. Co. (PB 6/10/81) D 7/7/83 [2]	June 9, 1983	July 7, 1983	New Orleans, LA $25,000
Ascot Trucking Corp. (an IL Corp.), 441–453 N. May, Chicago, IL; motor carrier; Ohio Casualty Ins. Co. (PB 6/6/79) D 7/11/83 [3]	June 6, 1983	July 11, 1983	Chicago, IL $35,000
B & P Motor Express Co., P.O. Box 13508, Tampa, FL; motor carrier; Reliance Ins. Co.	May 4, 1983	July 14, 1983	Baltimore, MD $25,000
V. Boutin Express Inc., 1397 Savoie St., Plessissville, Quebec, Canada; motor carrier; The Hanover Ins. Co.	June 20, 1983	June 30, 1983	St. Albans, VT $25,000
George W. Brown, Inc., 1475 East 222nd St., Bronx, NY; motor carrier; Peerless Ins. Co. D 5/12/83	Apr. 23, 1976	Apr. 23, 1976	New York Seaport $50,000
C-Wolf, Inc., P.O. Box 956, Granite Falls, WA; motor carrier; The Travelers Indemnity Co.	June 24, 1983	June 27, 1983	Seattle, WA $25,000
California Motor Express, d/b/a Delta Lines, Inc., 333 Hegenberger Rd, Oakland, CA; motor carrier; Protective Ins. Co. (PB 6/5/79) D 7/5/83 [4]	June 5, 1983	July 5, 1983	San Francisco, CA $25,000
Campbell's Delivery Service, Inc., 10000 John Saunders Rd., San Antonio, TX; motor carrier; The Travelers Indemnity Co. (PB 4/29/82) D 7/6/83	Apr. 27, 1983	July 6, 1983	Laredo, TX $25,000
Canny Trucking Co., Inc., 6–18 Spring Forest Ave., Binghamton, NY; motor carrier; Liberty Mutual Ins. Co.	May 24, 1983	July 11, 1983	Buffalo, NY $25,000
Delta Lines Inc.—See California Motor Express			
Four Winds, 9261–9271 N.W. 97th Terrace, Medley, FL; motor carrier; The American Ins. Co.	Mar. 3, 1983	June 17, 1983	Miami, FL $50,000

See footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
G & P Trucking Co., Greenwood, SC; motor carrier; Ins. Co. of North America (PB 7/11/77) D 7/12/83 [5]	July 11, 1983	July 12, 1983	Charleston, SC $25,000
Ivory, Inc., 1356 N.W. Second Ave., Boca Raton, FL; motor carrier; American Ins. Co.	June 17, 1983	July 6, 1983	Baltimore, MD $50,000
Arthur Johnson Co., 3230-58 West 38th St., Chicago, IL; motor carrier; Peerless Ins. Co. (PB 4/18/79) D 7/8/83 [6]	Apr. 18, 1983	July 8, 1983	Chicago, IL $35,000
Ligon Specialized Hauler, Inc., Post Office Drawer L, Madisonville, KY; motor carrier; Protective Ins. Co. (PB 3/26/81) D 7/5/83 [7]	July 1, 1983	July 5, 1983	Cleveland, OH $50,000
Liquid Transporters, Inc., 1292 Fern Valley Rd., P.O. Box 36247, Louisville, KY; motor carrier; The American Ins. Co. (PB 6/21/81) D 7/12/83 [8]	June 21, 1983	July 12, 1983	Cleveland, OH $150,000
Maritime Transport, Inc., P.O. Box 3482, Norfolk, VA; motor carrier; Washington International Ins. Co.	June 23, 1983	July 8, 1983	Norfolk, VA $25,000
Memphis Leasing-Duvall Transfer Co., P.O. Box 18180, Memphis, TN; motor carrier; Lawyers Surety Corp.	June 24, 1983	July 7, 1983	New Orleans, LA $50,000
Murray International Freight Corp., P.O. Box 9562, Baltimore, MD; motor carrier; Ins. Co. of North America	Mar. 8, 1983	June 29, 1983	Baltimore, MD $25,000
National Transportation, Inc., 14031 L St., Omaha, NB; motor carrier; Aetna Casualty and Surety Co. D 7/12/83	Feb. 6, 1980	Mar. 13, 1980	Chicago, IL $50,000
Post & Sons Transfer, Inc., 2326 Milwaukee Way, Tacoma, WA; motor carrier; Transamerica Ins. Co.	June 24, 1983	June 28, 1983	Seattle, WA $25,000
Reliance Motor Express, Inc., 28 Fitchburg St., Somerville, MA; motor carrier; Liberty Mutual Ins. Co. D 7/12/83	Nov. 25, 1980	Feb. 2, 1981	Boston, MA $50,000
SATAV Canada Transport Ltd., 8575 Pascal Gagnon, St. Leonard, Quebec, Canada; motor carrier; The Hanover Ins. Co.	July 12, 1983	July 15, 1983	St. Albans, VT $25,000
Sea-Tac Transfer, Inc., 18927-16th Avenue So., Seattle, WA; motor carrier; Washington International Ins. Co. (PB 5/10/82) D 7/18/83 [9]	July 15, 1983	July 18, 1983	Seattle, WA $25,000
Sharmax Freightlines, Inc., 12645 Midranch Lane, Lakeside, CA; motor carrier; Industrial Indemnity Co.	May 10, 1982	May 10, 1982	San Diego, CA $50,000

See footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Trans States Lines, Inc., 6815 S. Jenny Lind, Fort Smith, AR; motor carrier; St. Paul Fire & Marine Ins. Co. (PB 4/27/82) D 7/7/83 [10]	June 9, 1983	July 7, 1983	New Orleans, LA $25,000
H. C. Williams, Jr., Trucking Co., Inc., P. O. Box 1621, Wilmington, NC; motor carrier; United States Fire Ins. Co.	June 29, 1983	June 30, 1983	Wilmington, NC $25,000

1 Surety is The Ohio Casualty Ins. Co.
2 Surety is Fidelity & Deposit Co. of MD.
3 Surety is Ins. Co. of North America.
4 Principal is California Motor Express, a division of Delta Lines, Inc. Surety is Safeco Ins. Co. of America.
5 Principal is G & P Trucking Co., Inc. Surety is Liberty Mutual Ins. Co.
6 Principal is Arthur Johnson Co., Inc. Surety is Ins. Co. of North America.
7 Surety is Safeco Ins. Co. of America.
8 Surety is Ins. Co. of North America.
9 Surety is Hartford Accident & Indemnity Co.
10 Surety is Fidelity and Deposit Co. of MD.

BON-3-03

MARILYN G. MORRISON,
Director,
Carriers, Drawback, and Bonds Division.

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 172

Proposed Customs Regulations Amendment Relating to Relief From Certain Liquidated Damages Claims

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide that claims for liquidated damages for the failure to file timely an entry summary after the release of merchandise under an entry or an immediate delivery permit are to be demanded and cancelled pursuant to guidelines published by the Commissioner of Customs. This change is being proposed in order to have the regulations reflect the guidelines and to ensure uniform and consistent disposition of these liquidated damages claims.

DATE: Comments must be received on or before Sept. 26, 1983.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Miscellaneous Penalties Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5746).

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484) and Part 142, Customs Regulations (19 CFR Part 142), merchandise may be released from Customs custody before the deposit of duty and the submission of complete entry documentation. When an importer elects to use this procedure, the entry summary, together with the deposit of estimated duties and taxes due, must be submitted to Customs within 10 working days of re-

lease of the merchandise. An importer filing the entry summary late is subject to a demand under his Customs bond for liquidated damages in the amount of the value of the merchandise plus the duties and taxes owing. In such cases, under section 623, Tariff Act of 1930, as amended (19 U.S.C. 1623) and Part 172, Customs Regulations (19 CFR Part 172), the importer is afforded the opportunity to petition for relief from the payment of liquidated damages.

By T.D. 80–298, published in the CUSTOMS BULLETIN on December 24, 1980, Customs set forth guidelines for the disposition of violations of the timely entry summary filing requirements. Those guidelines, which went into effect on January 19, 1981, were necessary because the previous guidelines, contained in Customs Fines, Penalties and Forfeitures Handbook, were not specific enough to ensure uniform treatment of similar late filing violations.

Because these guidelines resulted in certain inequities, Customs undertook a study of the guidelines and their effectiveness. After testing new procedures and considering various revisions, by Manual Supplement 4400–11, issued on April 20, 1983, Customs promulgated new guidelines. These guidelines have been published as a Treasury Decision in the CUSTOMS BULLETIN, and will be incorporated into Customs Fines, Penalties, and Forfeitures Handbook.

The new guidelines have retained the basic concept of the previous guidelines, under which the petitioner has two options available to resolve the demand made against him.

Pursuant to option 1 of the new guidelines, the violator may pay a specified sum within 60 days of the date of receipt of notice of the demand for liquidated damages and the case will be closed. By electing this option, the violator waives his right to file a petition. He may, however, file a petition subsequent to payment of the claim if he does so in accordance with the Customs Regulations and if he has some new fact or information which merits consideration. Pursuant to option 1, for a dutiable entry where the entry summary is filed late, the specified sum will be $50 plus interest on the withheld duties at the rate of .1 percent (.001) per calendar day that the entry summary and/or duty were late. The specified sum for an entry for which there are no withheld duties (including a duty-free entry and a dutiable entry rejected, refiled late with no withheld duties) will be $50.

Pursuant to option 2, the violator may file a petition seeking more relief than he would receive by paying the specified sum of option 1. When the entry summary is late by less than 30 days, the district director will grant further relief only when the petitioner has demonstrated either that the violation did not occur, or that the violation was the result of Customs error. When the entry summary is late by 30 days or more, the district director may consider the following factors in response to a petition for relief:

1. The circumstances causing the delay;
2. The extent of the lateness;

3. The amount of duty withheld;
4. The past record of the violator in filing entry summaries timely; and
5. The violator's lack of intent to file his entry summary late (an uncorroborated statement to this effect will generally be insufficient).

Ordinarily, mitigation granted under option 2 will not be in an amount less than the specified sum of option 1 unless the petitioner has presented extraordinary mitigating factors which justify such action.

Section 172.22(d), Customs Regulations (19 CFR 172.22(d)), provides for the manner in which a district director may act upon applications for relief from liquidated damages claims assessed for the failure to file timely an entry summary after release of merchandise under an entry or under an immediate delivery permit. Section 172.22(d)(1) presently provides, in part, that if a district director is satisfied that the delay in filing the entry summary was not deliberate, he may cancel the claim for liquidated damages upon the payment of an appropriate sum which shall not exceed 10 percent of the duty assessed, but which shall not be less than $25. If the situation warrants, authority to exceed 10 percent of the duty is vested in the Commissioner of Customs pursuant to section 172.22(d)(3).

Section 172.22(d) was not amended to reflect and be consistent with the guidelines set forth in T.D. 80-298. It is now proposed to amend section 172.22(d) to state that claims for liquidated damages for the failure to file timely an entry summary after release under an entry or an immediate delivery permit shall be demanded and cancelled pursuant to guidelines published by the authority of the Commissioner of Customs. It is also proposed to amend section 172.22(d) to provide that, in the case of an entry summary which has not been filed, the district director may not grant relief from a claim for liquidated damages until the entry summary has been filed.

List of Subjects in 19 CFR Part 172

Customs duties and inspection, Imports, Administrative practice and procedure, Penalties.

Proposed Amendment to the Regulations

It is proposed to amend Part 172, Customs Regulations (19 CFR Part 172), in the following manner:

PART 172—LIQUIDATED DAMAGES

It is proposed to amend section 172.22(d) to read as follows:

§ 172.22 Special cases acted on by district director of Customs.

* * * * * * *

(d) *Failure to file timely entry summary after release under entry or immediate delivery permit.*

(1) If an entry summary for merchandise not subject to quota has not been timely filed after release under an entry or under a special permit for immediate delivery, the district director shall issue a demand for liquidated damages in accordance with sections 142.15 or 142.17 of this chapter, and in accordance with guidelines published by the authority of the Commissioner of Customs. The demand shall be cancelled in accordance with guidelines published by the authority of the Commissioner of Customs.

(2) If the district director is satisfied that the violation occurred solely because of a delay in the return by Customs to the importer or broker of documents necessary to file the entry summary, he may cancel such liquidated damages without payment.

(3) If collection of an amount greater than that established in accordance with this section appears warranted, the case shall be forwarded to the Commissioner of Customs for disposition.

(4) In the case of an entry summary which has not been filed, the district director may not grant relief from a demand for liquidated damages until the entry summary has been filed.

AUTHORITY

This amendment is proposed under the authority of R.S. 251, as amended, section 484, 46 Stat. 722, as amended, section 618, 46 Stat. 757, as amended, section 624, 46 Stat. 759 (19 U.S.C. 66, 1484, 1618, 1624).

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities; or cause a significant increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposed amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities.

EXECUTIVE ORDER 12291

The proposed amendment will not result in a "major rule" as defined in section 1(b) of Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

DRAFTING INFORMATION

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: July 5, 1983.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, July 27, 1983 (48 FR 34061)]

---

19 CFR Part 134

Proposed Customs Regulations Amendment Relating to Country of Origin Marking

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to establish certification requirements to prohibit the concealment of country of origin information appearing on articles imported in bulk and repacked in the United States after release from Customs custody. This change would require importers to certify to the district director having custody of the articles that: (a) If the importer does the repacking, he must not obscure or conceal the country of origin marking information appearing on the article, or else the container (e.g., blister pack) must be marked in accordance with applicable law and regulations; or (b) if the article is sold or transferred, the importer must notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements. The purpose of the proposed change is to ensure that an ultimate purchaser in the United States is aware of the country of origin of the article.

DATE: Comments must be received on or before September 26, 1983.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Anthony L. Piazza, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–566–8468).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless expressly excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the article or container will permit, in such manner as to indicate to an ultimate purchaser, the English name of the country of origin of the article.

Section 304(c) provides that any article not marked as required, shall be subject to a duty of 10 percent ad valorem, in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary Customs duties; unless the article is exported, destroyed, or marked, under Customs supervision. These marking duties cannot be remitted, wholly or in part.

In addition to the requirement for marking duties under section 304(c) for a country of origin marking violations, civil penalties may be incurred by the importer under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for entering merchandise into the domestic commerce by means of false documents; and criminal sanctions may be assessed under 18 U.S.C. 1001 for presenting false and misrepresented documents to the Government in connection with an entry. Criminal sanctions also may be assessed under 19 U.S.C. 1304(e) for concealing or obscuring country of origin markings. Further, if merchandise released from Customs custody under a bond is found not to be legally marked, liquidated damages also may be assessed for breach of the bond conditions.

Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements of 19 U.S.C. 1304, as well as the consequences and procedures to be followed if imported articles are not legally marked.

It has been brought to Customs attention by the Hand Tools Institute, an association consisting of domestic producers of hand tools, that various foreign-made tools are entering the United States in bulk containers, properly marked with the country of origin. Once in the United States, however, these tools are re-

packed in sealed, unmarked blister packs in such a manner that the country of origin marking appearing on the article is concealed from view by placing the article face down in the blister pack. Samples have been submitted to Customs showing this deceptive practice.

The intent of the marking legislation, since the first enactment appeared as section 6 of the Tariff Act of 1890, has been to allow the ultimate purchaser in the United States to know the country of origin of foreign articles. By knowing the country of origin, it allows the purchaser to make an informed choice on whether to buy the foreign article or its domestic counterpart. This choice was provided in large part because Congress recognized that if given a choice, consumers prefer domestic goods. To conceal or obscure country of origin marking information prevents consumers from exercising this preference; denies domestic producers the benefit flowing from such consumer preference; and frustrates the Congressional will.

In a related matter, by notice published in the Federal Register on September 10, 1982 (47 FR 39866), Customs proposed certification requirements for importers with respect to certain *unmarked* articles (i.e., J-list articles and articles incapable of being marked) imported in bulk and repacked in the United States after release from Customs custody. Customs believes that similar requirements should be adopted with respect to repacked *marked* articles, based on the same rationale. That is, if Customs knows, or has reason to believe, that the marked articles will not reach the ultimate purchaser in such a condition as to enable the purchaser to know the country of origin of the article before purchase, then Customs cannot find the marking of the article to satisfy the requirements of the statute. See *U.S. Wolfson Bros. Corp.* v. *United States,* 52 CCPA 46, C.A.D. 856 (1965), upon which this rationale is based.

Accordingly, to minimize the practice of concealing country of origin information appearing on repacked marked articles, Customs proposes to require importers to certify to the district director having custody of articles that: (a) If the importer does the repacking, he must not obscure or conceal the country of origin marking information appearing on the article, or else the container (e.g., blister pack) must be marked in accordance with applicable law and regulations; or (b) if the article is sold or transferred, the importer must notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements.

The purpose of the proposed certification requirement is to place the responsibility on the importer to ensure, as best as possible, that the country of origin information reaches the ultimate purchaser in such a manner as to enable the purchaser by an inspection of the article (or its container) to know the country of origin of which the article is a product before he chooses to purchase it. It

should be emphasized that under his proposal, the importer would not be liable to Customs if the repacker failed to comply with the marking requirements, provided that the importer follows through on his certification by informing the repacker of such requirements. If it is determined that the importer took the proper action according to his certification in this regard and the repacker failed to comply, Customs could seek criminal action against the repacker under 19 U.S.C. 1304(e). In addition, the certification and proof of compliance also may be useful in a civil action brought against a repacker under 15 U.S.C. 1125.

List of Subjects in 19 CFR Part 134

Customs duties and inspection, imports, importers, labeling, packaging, and containers.

Proposed Regulations Amendment

PART 134—COUNTRY OF ORIGIN MARKING

It is proposed to amend section 134.13, Customs Regulations (19 CFR 134.13), by adding a new paragraph (c) to read as follows:

§ 134.13 Imported articles repacked or manipulated.

(a) * * *

(c) *Certification requirements.* If an article subject to these requirements is intended to be repacked in retail containers (e.g., blister packs) after its release from Customs custody, or if the district director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the district director that: (a) If the importer does the repacking, he shall not obscure or conceal the country of origin marking appearing on the article, or else the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this Part; or (b) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

Certificate of Marking by Importer—Repacked Articles Subject to Marking

(Port of entry) ————————

I, ———————— of ————————, certify that if the article(s) covered by this entry (entry no.(s) ——— dated ———), is (are) repacked in retail container(s) (e.g., blister packs), while still in my possession, the new container(s) will not conceal or obscure the country of origin marking appearing on the article(s), or else the new container(s), unless excepted, shall be

marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR Part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date ————————

Importer ————————

The certification statement may appear as a typed or stamped statement on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular product for a given period (e.g., calendar year). If the blanket procedure is used, a certification must be filed at each port where the article(s) is entered.

(1) *Facsimile signatures.* The certification statement may be signed by means of an authorized facsimile signature.

(2) *Time of filing.* The certification statement shall be filed with the district director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with section 141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this subsection, the district director may decline to accept a bond for the missing document and demand redelivery of the merchandise under section 134.51, Customs Regulations (19 CFR 134.51).

(3) *Notice to subsequent purchaser or repacker.* If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

NOTICE TO SUBSEQUENT PURCHASER OR REPACKER

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR part 134 provide that the articles or their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article.

(4) *Duties and Penalties.* Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under section 1324.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592.

410-724 O - 83 - 4

Authority

This amendment is proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), section 304, 624, 46 Stat. 731, as amended, 759 (19 U.S.C. 1304, 1624), 77A Stat. 14 (19 U.S.C. 1202).

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

Executive Order 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review as prescribed by section 3 of the E.O. is not required.

Regulatory Flexibility Act

Customs has determined that an "initial" regulatory flexibility analysis will not be necessary in this instance because there is no indication that the proposed amendment will have a significant economic impact on a substantial number of small entities. Although importers of products subject to the requirements of this proposal may incur some increased costs, there is no indication that such costs will be significant or that a sustantial number of small entities will be affected. However, if public comments to this notice convince us that there will indeed be a significant economic impact on a substantial number of small entities, Customs would then prepare a "final" regulatory flexibility analysis, as required by the Regulatory Flexibility Act.

Drafting Information

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Alfred R. DeAngelus,
Acting Commissioner of Customs.

Approved: July 18, 1983.
Robert E. Powis,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, July 26, 1983 (48 FR 33908)]

U.S. Customs Service

General Notice

19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Polypropylene Ropes; Extension of Time for Comments

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension of time for comments.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments with respect to a domestic interested party petition concerning the tariff classification of polypropylene ropes. A notice inviting the public to comment on the receipt of this petition was published in the Federal Register on April 29, 1983 (48 FR 19510) and a subsequent document correcting certain omissions in the April 29, 1983, notice was published on May 25, 1983 (48 FR 23513). Comments were to have been received on or before July 27, 1983, the comment period deadline in the correction document. A request has been received to extend the period of time for the submission of comments for an additional 30 days. Customs believes that because of the complexity of the issues involved, an extension of the comment period is warranted. Accordingly, this notice extends the period of time for comments until August 26, 1983.

DATE: Comments must be received on or before August 26, 1983.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8181).

Dated: July 21, 1983.

HARVEY B. FOX,
Acting Director, Office of Regulations and Rulings.

[Published in the Federal Register, July 26, 1983 (48 FR 33961)]

19 CFR Chapter I

General Notice of Review of Customs Regulations; Extension of Comment Period

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule related notice; extension of comment period.

SUMMARY: In a notice published in the Federal Register on June 10, 1983 (48 FR 26831), the public was advised that as part of its continuing effort to reduce or eliminate obsolete or burdensome regulatory requirements, Customs is planning extensive revisions of its regulations. That document set forth parts of the regulations being considered for revision. To assist in this review, written comments were invited on any aspect of the project. Comments were to have been received on or before August 9, 1983. Because of the desire to involve all segments of the importing public at an early stage in this review process, Customs is extending the period of time for the submission of comments an additional 60 days.

DATE: Comments must be received on or before October 11, 1983.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Marvin M. Amernick, Chief, Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8327).

Dated: July 21, 1983.

HARVEY B. FOX,
Acting Director, Office of Regulations and Rulings.

[Published in the Federal Register, July 27, 1983 (48 FR 34061)]

(T.D. 83-146)

19 CFR Part 101

Change in the Customs Service Field Organization

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; CORRECTION.

SUMMARY: This document corrects an error in a document relating to an extension and redefinition of the geographical limits of the port of Seattle, Washington, within the consolidated Customs port of entry of Puget Sound, Washington. The document was published in the Federal Register on Tuesday, July 5, 1983 (48 FR 30611).

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8157).

BACKGROUND

In FR Doc. 83-17963, appearing at page 30611, in the issue of July 5, 1983, the document omitted several words from the description of the geographical limits of the port of Seattle, Washington, on page 30612, left hand column, under the heading "Changes in the Customs Service Field Organization". Thus, the entire corrected description of the consolidated port of Puget Sound, Washington, is reprinted as follows:

The ports of Seattle (section 35, Township 27 North, Range 3 East, West Meridian, County of Snohomish, and the geographical area within the boundaries beginning at the intersection of N.W. 205th Street and the waters of Puget Sound, proceeding in an easterly direction along the King County line to its intersection with 100th Avenue N.E., thence southerly along 100th Avenue N.E. and its continuation to the intersection of 100th Avenue S.E. and 240th Street S.E., thence westerly along 240th S.E. and South, to its intersection with the waters of Puget Sound and then northerly along the shores of Puget Sound to its intersection with N.W. 205th Street, the point of beginning, County of King, all within the State of Washington), Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Townsend, and the territory in Tacoma beginning at the intersection of the westernmost city limits of Tacoma and The Narrows and proceeding in an easterly, then southerly, then easterly direction along the city limits of Tacoma to its intersection with Pacific Highway (U.S. Route 99), then proceeding in a southerly direction along Pacific Highway to its intersection with Union Avenue Extended and continuing in a southerly direction along Union Avenue Extended to its intersection with the northwest corner of McChord Air Force Base, then proceeding along the northern, then western, then southern boundary of McChord Air Force Base to its intersection, just west of Lake Mondress, with the northern boundary of the Fort Lewis Military Reservation, then proceeding in an easterly direction along the northern boundary of the Fort Lewis Military Reservation to its intersection with Pacific Avenue, then proceeding in a southerly direction along Pacific Avenue to its intersection with National Park Highway, then proceeding in a southeasterly direction along National Park Highway to its intersection with 224th Street, East,

then proceeding in an easterly direction along 244th Street, East, to its intersection with Meridian Street, South then proceeding in a northerly direction along Meridian Street to the northern boundary of Pierce County, then proceeding in a westerly direction along the northern boundary of Pierce County to its intersection with Puget Sound, then proceeding in a generally southwesterly direction along the banks of the East Passage of Puget Sound, Commencement Bay, and The Narrows to the point of intersection with the westernmost city limits of Tacoma, including all points and places on the southern boundary of the Juan de Fuca Strait from the eastern port limits of Neah Bay to the western port limits of Port Townsend, all points and places on the western boundary of Puget Sound, including Hood Canal, from the port limits of Port Townsend to the northern port limits of Olympia, all points and places on the southern boundary of Puget Sound from the port limits of Olympia to the western port limits of Tacoma, and all points and places on the eastern boundary of Puget Sound and contiguous waters from the port limits of Tacoma north to the southern port limits of Bellingham, all in the State of Washington.

Dated: July 25, 1983.

B. JAMES FRITZ,
Director, Regulations Control
and Disclosure Law Division.

[Published in the Federal Register, July 29, 1983 (48 FR 34463)]

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 83-69)

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., ET AL., PLAINTIFFS *v.* UNITED STATES, ET AL., DEFENDANTS

Consolidated Court No. 81-7-00901

Before WATSON, Judge.

ITC Review of Injury Determination

The Court finds a lack of substantial evidence for the ITC's review determination that importations of television sets from Japan, presently subject to an antidumping duty order, would threaten injury to a United States industry if the antidumping duty order were to be revoked. The ITC determination is reversed and remanded.

[Judgment for plaintiffs Reversed and Remanded.]

(Decided July 14, 1983)

Weil, Gotshal & Manges (*A. Paul Victor, Stuart M. Rosen, Harry M. Davidow* of counsel) for plaintiffs Matsushita Electric Industrial Co., Ltd., Matsushita Electric Corporation of America, Panasonic Hawaii, Inc., and Panasonic Sales Company, a Division of Matsushita Electric of Puerto Rico, Inc., Victor Company of Japan, Limited and US JVC Corp.

Sharretts, Paley, Carter & Blauvelt, P.C. (*Gail T. Cumins* and *Ned Marshak* of counsel) for plaintiffs Sanyo Electric Co., Ltd., Sanyo Electric Inc., and Sanyo Manufacturing Corporation.

Tanaka, Walders & Ritger (*H. William Tanaka* and *Lawrence R. Walders* of counsel) for plaintiffs Hitachi, Ltd., Hitachi Sales Corporation of America, and Hitachi Sales Corporation of Hawaii.

Arent, Fox, Kintner, Plotkin & Kahn (*Robert H. Huey, Stephen L. Gibson* and *Rodney F. Page* of counsel) for plaintiffs Toshiba Corporation, Toshiba America, Inc., and Toshiba Hawaii, Inc.

Baker & McKenzie (*Thomas P. Ondeck* of counsel) for plaintiff Mitsubishi Electric Corporation.

Wender, Murase & White (*Peter J. Gartland* and *Robert D. Piliero* of counsel) for plaintiff Sharp Electronics Corporation.

Siegel Mandell & Davidson, P.C. (*Brian Goldstein* and *Edward B. Ackerman* of counsel) for plaintiff General Corporation of Japan.

United States International Trade Commission, Office of the General Counsel (*Michael H. Stein,* General Counsel; *Joel R. Junker,* Assistant General Counsel for Litigation; *Jane Katherine Albrecht,* Attorney) for the defendant United States.

Frederick L. Ikenson, P.C. (*Frederick L. Ikenson* and *J. Eric Nissley* of counsel) for the defendant intervenor Zenith Radio Corporation.

WATSON, *Judge:* This is a judicial review of a determination [1] in which the U.S. International Trade Commission (ITC) found that an industry in the United States would be threatened with materal injury if an antidumping duty order issued against television sets from Japan [2] were to be modified or revoked. The ITC had to first find that circumstances had changed sufficiently since the issuance of the antidumping duty order to justify the type of administrative review provided in section 751(b) of the Tariff Act of 1930 (19 U.S.C. § 1675(b)).[3] The result of the ITC's review was then challenged by

---

[1] *Television Receiving Sets From Japan,* Inv. No. 751-TA-2, USITC Pub. No. 153, 46 Fed. Reg. 37,702 (1981).

[2] This antidumping duty "order," as it is now called, was technically a dumping "finding" at the time it was made in 1971 in T.D. 71-76. The "order" was issued following a determination by the Secretary of the Treasury that television sets from Japan were being or were likely to be sold at less than fair value (35 Fed. Reg. 18,549 (1970)) and a determination by the United States Tariff Commission (now the ITC) that an industry in the United States was being injured by reason of importations of such merchandise. The determination of injury was published in *Television Receiving Sets From Japan,* Inv. No. AA 1921-66, USTC Pub. No. 367, 36 Fed. Reg. 4,576 (1971).

[3] For convenience, the portion of the provision which is applicable here is highlighted by script type face.
19 U.S.C. § 1675 Administrative review of determinations.

the proponents of revocation[4] in an action brought under 19 U.S.C. § 1516a(a)(2)(B)(iii), which action requires the Court to hold unlawful any determination found to be unsupported by substantial evidence, or otherwise not in accordance with the law. 19 U.S.C. § 1516a(b)(1)(B).

The Court has examined the administrative record, studied the briefs of the parties and listened to oral argument. As a result, the Court concludes that in one essential respect the determination was not based on substantial evidence. There was no substantial evidence to support the conclusion that the level of importations from Japan would be injurious if the antidumping order were to be revoked.

I

The Court begins with a holding that, if the ITC is the only agency from which such a review is sought, it has to presume, as it did, that such imports as will be made will be at less than fair value. This may produce some anomalies[5] but it is the only result which is consistent with the fact that the International Trade Administration of the Department of Commerce (ITA) has the power to conduct a "changed circumstances" review of its original determination of sales at less than fair value.[6] What the ITA thought

---

. . . . . .

(b) *Reviews upon information or request.*

(1) *In general. Whenever the* administering authority or the *Commission receives* information concerning, or *a request for the review of,* an agreement accepted under section 704 or 734 [19 U.S.C. § 1671c or 1763c] or *an affirmative determination made under section* 704(h)(2), 705(a), *705(b),* 734(h)(2), 735(a), or 735(b) [*19 U.S.C.* § 1671c(h)(2), *1671d (a), (b),* 1673c(h)(2), or 1673d (a), or (b)], *which shows changed circumstances sufficient to warrant a review of such determination, it shall conduct such a review after publishing notice of the review in the Federal Register.* In reviewing its determination under section 704(h)(2) or 734(h)(2) [19 U.S.C. § 1671c(h)(2) or 1673c(h)(2)], the Commission shall consider whether, in the light of changed circumstances, an agreement accepted under section 704(c) or 734(c) [19 U.S.C. § 1671c(c) or 1673c(c)] continues to eliminate completely the injurious effects of imports of the merchandise.

(2) *Limitation on period for review. In the absence of good cause shown—*

(A) *the commission may not review a determination under section 705(b)* or 734(b) [*19 U.S.C. § 1671d(b)* or 1673d(b)], and

(B) the administering authority may not review a determination under section 705(a) or 735(a) [19 U.S.C. § 1671d(a) or 1673d(a)], or the suspension of an investigation suspended under section 704 or 734 [19 U.S.C. § 1671c or 1673c],

less than 24 months after the date of publication of notice of that determination or suspension.

[4] The proponents of revocation who are plaintiffs here are Matsushita Electric Co., Ltd., Matsushita Electric Corporation of America, Panasonic Hawaii, Inc., Panasonic Sales Company, a Division of Matsushita Electric of Puerto Rico, Inc.; Victor Company of Japan, Ltd. and US JVC Corp.; Sanyo Electric Co., Ltd., Sanyo Electric Inc., and Sanyo Manufacturing Corp.; Hitachi Ltd., Hitachi Sales Corporation of America, and Hitachi Sales Corporation of Hawaii; Sharp Electronics Corporation; Toshiba Corporation, Toshiba America, Inc., and Toshiba Hawaii, Inc.; Mitsubishi Electric Corporation; and General Corporation of Japan.

[5] The ITC may find that imports will increase due to conditions which normally would allow the imports to be priced at fair value, or even at a premium. Nevertheless, if the *ITA* has not made a changed circumstances review, the presumption that future sales would be at less than fair value would operate to require that sales of the increased imports be considered to be at less than fair value. This anomaly may be displayed in the second ITC scenario, discussed later in the main text, which has the Japanese temporarily increasing their exports to the U.S. market to meet short-term increases in U.S. demand.

[6] The ITA rules are found at 19 CFR §§ 353.53, 353.54. 19 CFR § 353.53, Administrative Review of determinations.

. . . . . .

(b) *Changed circumstances.* (1) Whenever the Secretary receives information concerning, or a request for the review of, an Antidumping Duty Order or Finding, or an agreement on the basis of which an investigation was suspended, which shows changed circumstances sufficient to warrant review of such Order, Finding or agreement, he shall, before conducting such review, publish a "Notice of Intention to Review Antidumping Duty Order" or "Notice of Intention to Review Suspension Agreement" in the FEDERAL REGISTER. Such Notice

Continued

about the likelihood of future sales at less than fair value, was unknown to the ITC and that unknown factor must operate as a presumption in the ITC's review.

The ITA's review powers would be pointless if the question of whether there will be sales at less than fair value could be reviewed and resolved by the ITC alone. In order to give meaning to the separation of function which runs throughout the law, the ITC must presume that future sales will be at less than fair value if the ITA has not reviewed the matter.[7]

In sum then, the choices of a party seeking a "changed circumstances" review under section 751(b) are two. It can seek review by the ITA on the question of sales at less than fair value and, if the ITA still finds the presence or likelihood of sales at less than fair value, it can move on to the ITC and seek a conclusion that, nevertheless, material injury will not result. As an alternative, a party can forego review by the ITA and go directly to the ITC. The latter strategy must result in the unalterable persumption in the ITC review that such sales as there will be, will be at less than fair value.

II

The presumption that future sales will be at less than fair value represents the limit of the presumptions which the ITC can make in this review. As will be explained later, in all other respects the review is a neutral investigation of the likelihood of the recurrence of injury. The ITC has stated its task to be an investigation of whether an industry in the United States would be materially injured or threatened with material injury by reason of imports of the merchandise covered by the antidumping order if the order were to be modified or revoked.[8]

---

shall indicate the merchandise concerned, and any changed circumstances or other significant issues then known which will be considered during the review.

(2) In the absence of good cause shown, no review based on allegations of changed circumstances shall be conducted within 24 months after the date of an Affirmative Final Determination or a determination to suspend an investigation.

. . . . . .

§ 353.54 *Revocation of antidumping duty orders and termination of suspended investigations.*

(a) *In general.* Whenever the Secretary determines that sales of merchandise subject to an Antidumping Finding or Order or a suspended investigation are no longer being made at less than fair value within the meaning of section 731 of the Act and is satisfied that there is no likelihood of resumption of sales at less than fair value, he may act to revoke or terminate, in whole or in part, such Order or Finding or suspended investigation. Ordinarily, consideration of such revocation or termination will be made only subsequent to a review as described in § 353.53 of this part.

. . . . . .

[7] The ITC can work with the most recent results of any *annual* review of sales at less than fair value conducted by the ITA under section 751(a) [19 U.S.C. § 1675(a)] but that cannot be used to infer the absence of the likelihood of *resumption* of sales at less than fair value, which is for the ITA alone to decide.

[8] 19 CFR § 207.45.

§ 207.45 *Investigation to review outstanding determination.*

(a) *Purpose.* Upon the receipt of information concerning, or upon a request for a review of, a determination concerning a suspension agreement accepted under section 704 or 734 of the Act or an affirmative determination made under section 704(h)(2), 705(b), 734(h)(2), or 735(b) of the Act, or a determination which resulted in an order issued under the Antidumping Act, 1921, or section 303(b) of the Act, which shows changed circumstances sufficient to warrant a review of such determination, the Commission shall institute an investigation to determine, as the case may be: (1) Whether, in light of the changed circumstances, the agreement continues to completely eliminate the injurious effect of imports of the merchandise; or (2) whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of the merchandise covered by the countervailing duty order or the antidumping order if the order were to be modified or revoked. In the case of an

The ITC determination of this question consisted of two subsidiary findings, first, that the U.S. industry was still in a delicate state of health and second, that the levels of imports from Japan, after the antidumping duty order was revoked, would cause injury. The finding as to the health of the U.S. industry was supported by substantial evidence in the form of evidence that it was highly competitive, price sensitive and showing low profitability. Although there were other, possibly more significant, signs of recovery in the industry and, although competition could be seen as an indicator of health,[9] these are matters of weighing an interpreting economic evidence on which the Court will defer to agency expertise.

On the other hand, the subsidiary finding that import levels would be injurious in the absence of the antidumping duty order was not supported by substantial evidence even in the loosest sense. This finding took the form of a prediction that import levels from Japan would increase significantly. The finding about future import levels gave three supporting reasons, first, the present intentions of the Japanese, second, their production capacity, and third, the incentives or motivations which would govern their future behavior.

The judgment of present intentions is a proper, and possibly controlling element of a review by the ITC. *City Lumber Co.* v. *United States,* 59 CCPA 89, 96, C.A.D. 1945, 457 F2d 991 (1972). Here, however, it was not based on any positive evidence tending to show an intention to increase the levels of importation. The judgment that import levels would intentionally increase was expressed by statements of the ITC that there was no basis to believe otherwise; [10] that the ITC was not convinced otherwise by the statements of counsel; [11] that there was no direct testimony by counsel or corporate executives; [12] that there was an absence of credible submissions.[13] All this demonstrates that, despite its protestations that it was not placing a burden of proof on the proponents of revocation,[14] the ITC relied on an asserted failure of the Japanese inter-

---

evenly divided vote as to whether a Commission determination should be affirmative or negative, the outstanding agreement or order shall remain unaffected. In the absence of good cause shown, no investigation under this section shall be instituted within 24 months of the date of publication of the notice of the suspension or determination.

. . . . . .

[9] These other factors were stressed in the dissent by Commissioner Stern.

[10] 46 Fed. Reg., pp. 32,703, 32,706.

[11] 46 Fed. Reg., pp. 32,703.

[12] 46 Fed. Reg., pp. 32,703, 32,706.

[13] 46 Fed. Reg., pp. 32,703, 32,706, 32,707.

[14] In footnote 12 of its determination (46 Fed. Reg. 32,706), the ITC stated as follows:

It is appropriate here to add a word about the task of providing information to the Commission. Once the petitioning importers have persuaded the Commission that changed circumstances warrant institution of a review investigation, there is no indication in the statute, the legislative history, or in our regulation of a burden of proof, or even of coming forward, on either proponents or opponents of revocation of the order. The Commission's only guidance is that it must "conduct a review." Tariff Act of 1930, § 751(b)(1), 19 U.S.C. 1675(b)(1). A Commission review determination will be overturned, however, if "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. 516(a)(2)(iii)(b)(1)(B). The Commission has a subpena [sic] power, 19 U.S.C. 1333, but it must necessarily rely on evidence voluntarily submitted by, and on the initiative of, the participants. This is doubly true when the information needed to support a determination is completely within the control of the participants who stand to gain from that determination and who seek it by petitioning for review. Let us make clear that there is no legal evidentiary burden on a participant to come forward with evidence or to persuade the Commission, but neither is it reasonable to expect the Commission to make a petitioner's case for it.

ests to introduce evidence, combined with a decision that the evidence which was submitted lacked credibility.

In this case, on the subject of intention, this approach indicates that a presumption was made that the intention to increase imports (which was temporarily restrained by the existence of an antidumping duty order) remained undiminished.

Such a presumption is not permitted by the law, which envisages a review conducted by the ITC, and gives no inkling that in marked contrast to all the other phases of an antidumping investigation, here for the first time a burden is placed on a party. If a party can be said to have a burden of proof in these matters it is the burden of proving to the agency that circumstances have changed sufficiently to justify a review. In the review itself, however, the only burden on a party is the burden of cooperating with the investigation of the administrative agency. The credibility of testimony is important only when a party has a burden of proof, or when there is conflicting testimony as to facts. If, after all is said and done, the ITC has nothing more than its dissatisfaction with a party's evidence on which to base a determination, it is not relying on substantial evidence.

III

To a large extent, the difficulties in this administrative determination had their origin in a misconception of the nature and purpose of the administrative review.

The statutory language gives no details about the conduct of these administrative reviews.[15] The legislative history is unrevealing.[16] The ITC has stated that its review should be a determination of whether the industry would be threatened with material injury from imports of the product covered by the order if the antidumping duty order were to be modified or revoked. In the review, the ITC saw itself in the position of having to honor the basic protective intent of the antidumping law; that is to say, it believed it had to treat the continuing validity of the existing antidumping order as a premise of the review.[17] This led it to go beyond its neutrally stated objective and to engage in a presumption that injury would recur and to place a burden on the proponents of revocation to prove otherwise. However, although the purpose of antidumping duties is unquestionably to protect American industry, the provision for review of final injury determinations cannot be given the same protective motive.

---

[15] See note 3, *supra*, for the text of 19 U.S.C. § 1675(b).

[16] The entire explanation of 19 U.S.C. § 1675 consists of the following, which appears to be addressed to the annual reviews of § 1675(a): "This provision expedites the administration of the assessment phase of antidumping and countervailing duty investigations. It provides a greater role for domestic interested parties and introduces more procedural safeguards." S. Rep. No. 249, 96th Cong., 1st Sess., 80, 81 (1979).

[17] 46 Fed. Reg. 32,704 (1981) stated as follows:

> It is plain that the antidumping provisions of title VII of the Tariff Act of 1930 are intended to protect U.S. industries from injurious unfair trade practices. Thus, our review must also have the same intent, while allowing importers the opportunity to demonstrate that their imports will not materially injure the domestic industry.

In the opinion of the Court, in order for the review provision to operate consistently within the structure of this law and in order for it to function in harmony with one of the international agreements which the law was intended to implement, the review must establish the continuing need for the injury determination. If it cannot do so, the original determination has become vestigial.

This conclusion is necessitated by the statutory prerequisite to administrative review, namely, that circumstances have changed since the issuance of the antidumping order. A preliminary determination that circumstances have changed means, in this case, that there is some evidence to support the view that the original injury determination is no longer valid. This is the fundamental justification for a review of the injury determination. If the ITC had found that there was *not* a sufficient change of circumstances to justify a review, that decision would have been judicially reviewable under 19 U.S.C. § 1516a(a)(1)(A)(ii).[18] On the other hand, the finding of changed circumstances sets in motion the review process. This can only mean that a new investigative finding is needed to maintain the validity of the injury determination in the new circumstances. If the threat of injury cannot be found, or if a finding that there is a threat is not supported by substantial evidence, the unavoidable inference from the evidence of changed circumstances is that the threat of injury has dissipated.

Another important factor is the necessity and desirability whenever possible, of harmonizing this law with the international agreements it was intended to implement. Section 2(a) of the Trade Agreements Act of 1979 (19 U.S.C. § 2503(a)) expressly approved the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) which relates to antidumping measures, and is referred to as the International Antidumping Code. Article 9(a) of the Code relates to the review of antidumping duty orders and provides that "an anti-dumping duty shall remain in force only as long as, and to the extent necessary to counteract dumping which is causing injury." The injury referred to includes the threat of material injury.[19] It would be unreasonable to take or maintain the potent measures of these laws for anything more diffused than the threat of material injury. It must follow that when

---

[18] § 1516a. *Judicial review in countervailing duty and antidumping duty proceedings*

(a) Review of determination.

(1) *Review of certain determination.*

(A) Thirty-day review. Within 30 days after the date of publication in the Federal Register of notice of—

* * * * * * *

(ii) a determination by the administering authority or the Commission, under section 751(b) of this Act [19 U.S.C. § 1675(b)], not to review an agreement or a determination based upon changed circumstances,

* * * * * * *

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusion upon which the determination is based.

[19] Footnote 1 to Article 3 of the Code reads as follows:

Under this Code the term "injury" shall, unless otherwise specified, be taken to mean material injury, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

the continued necessity for the antidumping duty is placed in question by a change in circumstances, the review required by section 751(b) must either find reason for continuation of the duty or lead to revocation.

The formalization of the review process, the passage of time,[20] the change of circumstances, the international commitment not to leave antidumping orders in place longer than necessary, the elaboration of the related revocation power of the ITA[21] all suggest that in this review the continuation of an antidumping order depends on a finding that injury is still a threat. As noted, it also possible to reason from the lack of an explicit burden of proof on the proponents of revocation and from harmony with the earlier stages of these investigations in which there is no burden of proof on a party. From all this, it can be concluded that the ITC has the duty to investigate whether there is a threat of injury and if it cannot find one, it must recommend revocation of the order.

The Court is satisfied that this does not make a foregone conclusion of the review process and does not present the ITC with an impossible task. In keeping with normal principles of administrative law, the Courts sustain a determination which is supported by substantial evidence even if it does not represent the view of the evidence which the Court might have taken. *Consolo* v. *Federal Maritime Commission,* 383 U.S. 607 (1966).

In this matter, however, it became apparent that the determination, although disarming in its candor, went beyond the limits of administrative fact-finding in several important respects. There is nothing to support the ITC's subsidiary finding that the Japanese presently intend to increase imports if the antidumping duty order is revoked or modified. The ITC could not derive intent from a presumption that the antidumping order was presently restraining intent, or from a failure by the proponents of revocation to offer evidence of a lack of intent, or solely from a disbelief in the credibility of the evidence offered.

IV

The ITC's concentration on intent makes it difficult to isolate the grounding of the ITC determination in objective economic factors. To a certain extent even the later conclusions that develop those factors are clouded by the element of assumed intention and the vestiges of a presumed increase in import quantities. Nevertheless, the evidence regarding the objective factors of production capacity

[20] This ITC review must normally wait until at least two years from the publication of the determination under review. 19 U.S.C. § 1675(b)(2).

[21] 19 U.S.C. § 1675(c) reads as follows:

(c) *Revocation of countervailing duty order or antidumping duty order.* The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order, or an antidumping duty order, or terminate a suspended investigation, after review under this section. Any such revocation or termination shall apply with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on and after a date determined by the administering authority.

and economic incentives or motivation has been analyzed by the Court and has been found wanting.

Evidence of production capacity alone does not support the ITC's conclusion that imports would increase. First, it is not stated by the ITC as a self-sufficient basis for finding that import levels would increase and it is questionable whether raw capacity could provide such a basis, without being reconciled with the tremendous increase of the production capacity of related Japanese-owned companies in the United States.

In this regard, the development of a coherent finding was probably impeded by the undisputed fact that the Japanese had established significant production facilities in the U.S. with which they were supplying approximately twenty-five percent of U.S. demand at the time of the ITC review determination. A determination that the Japanese would import at increased levels would have had to confront the question of the apparent irrationality of such behavior *vis a vis* their American production facilities. The ITC did not see sustained or prolonged increases in importations. It saw only short-term supplemental penetrations, which, as will be explained, even if correctly foreseen, would not cause material injury.

Second, even in the combination of capacity with other economic factors the ITC did not have substantial evidence for concluding that import levels would be injurious. This emerges from a close examination of the examples of injury predicted, which will be referred to as the scenarios. The first scenario,[22] combines increased demand in the U.S. market (for which the evidence is definitely substantial) with a virtual assumption that, given the production flexibility of the Japanese, importations of their products will increase.

The first scenario is not really a finding that import levels will be injurious, but a step beyond that to a prediction, which is probably a truism, that prices would be suppressed if the Japanese were to increase import levels at less than fair value. In effect, it assumes that import levels will increase and finds that prices will then be suppressed.

The second scenario,[23] is somewhat more specific. It sees the Japanese using imports to supplement their American production

---

[22] 46 Fed. Reg. 32,706 stated as follows:

There are at least three ways in which continued or resumed dumping upon revocation of the order can materially injure the domestic industry. First, the domestic market is currently highly competitive, and although demand is high, profitability is relatively low. If demand continues to pick up, and some sources are predicting an increase of as much as 50 percent over three to five years, renewed or increased dumping by the importers could keep prices suppressed when they would normally rise. The Japanese producers would thus be able to increase market share for both their imports and domestic production through LTFV sales, found to be injurious in 1971.

[23] 42 Fed. Reg. 32,706 stated as follows:

Second, business planners will increase capacity only when certain that it will be used. The Japanese can use dumped imports to supplement domestic production when there are short-term, cyclical increased [sic] in demand. They can be expected to use imports to secure any increase in market share, and then gradually increase domestic production capacity to consolidate and maintain it. There is some indication that this phenomenon is occurring now with the antidumping order in place. The 13-inch screen size is one of the most dynamic growth areas in the industry; there was an increase in apparent consumption of 44 percent in the first quarter of 1981 over that in the corresponding period of 1980. At the same time, imports of 13-inch sets from Japan increased 400 percent. The Japanese importers say that the increase occurred because of a shortage of domestically sourced picture tubes. In response to inquiries by the staff, however, domestic tube

Continued

when there are short-term, cyclical increases in demand, in order to secure the increased market share until the U.S. production can be expanded. Although there may have been substantial evidence for finding that there would be short-term increases in imports,[24] the outcome of this scenario would not be injury but a form of assistance to the U.S. industry. If the inclusion in the U.S. industry of Japanese-owned production facilities is accepted (and this is a premise of the ITC review), then any short-term import strategy designed to temporarily occupy a market segment for the benefit of related American subsidiaries, would be a benefit for the industry.[25] If it does harm, it does so to competitors within the U.S. industry, not to the industry as a whole.

The third scenario has two variants, both of which are conjectural in origin and development. The first variant [26] begins with diffuse predictions of surplus production of Japanese picture tubes leading to the use of those tubes to increase Japanese television production and then to increased exportations to the attractive U.S. market. The second variant [27] begins with the unsupported projection of restraints on the importation of Japanese televisions or tubes in various important foreign markets and moves directly to the shift of the resulting excess production to the U.S. market.

The Court agrees that this review can be predictive in nature, looking beyond the revocation of the antidumping duty order.[28] In this sense, it may have to be somewhat more predictive than the determination in the original investigation that there is a threat of injury. This may be necessary because in this review the antidumping order, operating as a strong corrective or deterrent, can be pre-

---

producers contend that except for a temporary shortage in October and November, 1980, there was an adequate supply through the first quarter of 1981. Moreover, some production schedules are even being revised downward because of burgeoning inventories. Staff memorandum INV-E-036 (Apr. 9, 1981). In any case, this considerable increase in imports is a demonstration of the supply flexibility available to the Japanese companies, a flexibility that would be enhanced by the removal of restrictions on pricing. [Footnotes omitted]

[24] The observed surge in imports of sets with 13" screens which occurred during the investigation can be accepted as substantial evidence for a "supplementation" finding.

[25] In this respect, the second scenario may be inconsistent with the ITC's finding that there was no special coordination between the Japanese and their American subsidiaries and hence, no reason to exclude the American subsidiaries from the definition of industry under 19 U.S.C. § 1677(4)(B).

[26] 46 Fed. Reg. 32,706 stated as follows:

> The third area of concern is the problem of production and distribution of the television receiver's largest and most expensive component, the picture tube. There are indications of a softening of demand for Japanese tubes in their other major overseas markets, particularly Asia and Europe. The decrease in demand appears to be due to an increase in local production capacity in those areas. In order to utilize Japanese home production capacity more efficiently, they will need other outlets. The increase in demand in the U.S. makes it a likely target. In fact, import data for January-April 1981 show a sharp increase in tube imports from Japan.
>
> There is an additional factor that, combined with revocation of the order, could make it advantageous to bring in the additional tubes in the form of complete sets. Imported tubes are subject to a duty of 15 percent. They are bulky, fragile, and costly to ship. With the greater flexibility available after the lifting of the order, there may be an incentive to bring in complete sets, or subassemblies, including tubes now covered by the order, at the lower overall duty rate of 5 percent. [Footnotes omitted]

[27] 46 Fed. Reg. 32,706-7 stated as follows:

> Finally, any major import restraint on sets or tubes in the European Community, Asia, or Latin America, or a softening of the Japanese domestic market, will encourage a diversion of trade to the United States, the largest and most open market in the world. It is a relatively simple matter to shift a production line from sets compatible with the European broadcast system to sets compatible with the U.S. system. There will be added incentive to rationalize production and alter pricing practices when faced with such problems as excess capacity, export market constraints, and shift in demand in the world marketplace.

[28] Of course, it is still possible that *present* susceptibility to injury can be detected in a review and can be so great that levels of importation are relatively academic.

sumed to distort the meaningfulness of observable data regarding present conduct in the U.S. market.

However, it does not follow that these circumstances justify the use of something less than substantial evidence as the starting point for agency reasoning.[29] The *nature* of the factual predicate in a review may vary. It may have to consist of facts derived from outside the U.S. market or outside the producers' home market. It may have to involve facts regarding important component parts of the products in question. It may have to include other measurable economic factors upon which it is reasonable to base inferences. But, in all instances, the factual predicate, i.e., the base on which the inferences are made must have a present, verifiable substance to it. This is lacking in the ITC findings. There was no real evidence of restraints in any other markets on the sale of Japanese television sets or tubes. As a result, the diversion of those sets to the U.S. market was only a speculation. The future occurrence of excess tube production in Japan was, in itself, more a prediction than a finding of fact. It then required a further prediction that excess tube production would force excess television production and would then require increased exportation to the United States. This was a chain of predictions set on an insubstantial base and was entirely conjectural. It is of crucial importance to the fair administration of this law that these determinations, even in their most predictive mode, must detect real and imminent events and must have a basis in substantial evidence.

V

The Court has found no support in the case law for the reworking of the substantial evidence standard for which the ITC is, in effect, asking. It has not been persuaded that the ITC review determination involved matters of such an inherently indeterminate and inchoate nature that it is impossible to base decisions on conventional evidence.

The decision in *Industrial Union Department* v. *American Petrol. Inst.*, 448 U.S. 607 (1979) is by far the most instructive of the many cases cited by the parties. Its lesson is all the more important because the agency in that case was operating in a relatively unknown area to an even greater extent than the ITC. In that case, the Supreme Court affirmed the holding of the Court of Appeals that the Secretary of Labor lacked substantial evidence to lower from ten parts per million (10 ppm) to 1 ppm the maximum worker exposure to the cancer-causing chemical, benzene. The new standard was based on *assumptions* that exposure at levels below 10 ppm caused cancer and that the risk of cancer would decrease as exposure levels decreased. The Supreme Court found that the burden

[29] This point is connected to the dispute over whether the ITC review injury determination has to find that the threat of injury is real and imminent. This should be a corollary of the requirement of substantial evidence and can hardly be disputed. *Alberta Gas Chemicals INc.* v. *United States*, 1 CIT 312, 515 F. Supp. 780 (1981).

was on the Secretary to show on the basis of substantial evidence that existing standards presented a significant risk of material health impairment and further held that this was not a disabling burden. It remained within the agency's responsibility to determine what it considers significant,[30] it could have some leeway in making that determination on the frontiers of scientific knowledge, and could even take the more conservative position. The Supreme Court further stated,

Thus, so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than underprotection. 448 U.S. at 656.

The aforementioned case shows both the weakness of the ITC approach and, at the same time, offers encouragement to proper determinations.

The same situation is seen in a more competitive context in *Boise Cascade Corp.* v. *Federal Trade Commission,* 637 F2d 573 (9th Cir. 1980). In that case, the Court of Appeals found that the Federal Trade Commission (FTC) lacked substantial evidence to conclude that a system of delivered pricing (using West Coast freight rates) used by certain Southern plywood mills, had an anti-competitive effect in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The Court found that the FTC's conclusion was "little more than a theory of the likely effect of the challenged pricing practices" (637 F2d at 578) and was "largely a deduction from the Commission's reasoning about the tendencies of the challenged practice." (637 F2d at 580). In addition, the Court held that the FTC's approach had the effect of requiring the Southern mills to prove that the challenged practices had no anti-competitive effect.

In the interests of enforcement they may not take leave of normal practice, may not place burdens where they should not be placed, and may not use impermissible assumptions and suppositions rather than substantial evidence.

The only possible distinction in this case is that here the administrative agency is doing its work on its own previous determination. However, as has been pointed out, that earlier determination can be given no special standing in setting the burdens and responsibilities of the ITC. In all respects, this review has the character of a renewed investigation, in changed circumstances, into the existence of a threat of material injury.

A case such as *Industrial Union Department, AFL-CIO* v. *Hodgson,* 499 F2d 467 (D.C. Cir. 1974), does not help the ITC. In that case the decision made by the Secretary of Labor under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* (OSHA) setting low limits for worker exposure to asbestos was upheld as

[30] 448 U.S. at 655 including footnote 62.

rational and within his authority. The Court of Appeals frankly stated that it could not use the statutory substantial evidence standard for those of the Secretary's findings which were on the frontiers of scientific knowledge, and which were, in reality, policy or quasi-legislative decisions which he was authorized to make. The decisionmaking process of the ITC does not have the same difficulties and it does not require the same freedom of action. In any event, the ITC does not have the same mandate for quasi-legislative action in its factfinding investigations as the Secretary of Labor has in promulgating general rules and standards. The ITC cannot engage in the same "better to be safe than sorry" reasoning. Questions of whether there is a threat of injury which precludes revocation have been resolved without speculative reasoning or legislative creativity and there is no reason to think that the ITC cannot find substantial evidence in its area of expertise.

In sum, the Court finds that there was a lack of substantial evidence to support the ITC's determination regarding a threat of material injury from imports of television receiving sets from Japan. A remand for further clarification or investigation is not called for in this situation. This is not a case in which the ITC failed to sufficiently articulate its rationale to allow judicial review as in *SCM Corp.* v. *United States,* 84 Cust. Ct. 227, C.R.D. 80-2, 487 F. Supp. 96 (1980); nor is it a case in which a corpus of correct data has to be investigated for the first time as in *Sprague Electric Co.* v. *United States,* 84 Cust. Ct. 260, C.R.D. 80-6 (1980) modifying on reh. 84 Cust. Ct. 243, C.R.D. 80-3, 488 F. Supp. 910 (1980).

Here, the unavoidable conclusion from the lack of substantial evidence of a threat of injury is that, in the light of changed circumstances, there is no threat of injury. Accordingly, it is hereby

ORDERED that the determination of the ITC is reversed and it is further

ORDERED that the ITC shall reach a new determination consistent with this opinion.

(Slip Op. 83-70)

REPUBLIC STEEL CORPORATION, UNITED STATES STEEL CORPORATION, ET AL., PLAINTIFFS *v.* UNITED STATES OF AMERICA AND U.S. INTERNATIONAL TRADE COMMISSION, DEFENDANTS, and COMPANHIA SIDERURGICA PAULISTA (COSIPA), ET AL., DEFENDANT-INTERVENORS

Consolidated Court No. 82-3-00372

Before WATSON, *Judge.*

Memorandum Opinion and Order

Cravath, Swaine and Moore (Alan J. Hruska) for plaintiffs Republic Steel Corporation, Inland Steel Company, Jones and Laughlin Steel Incorporated, National Steel Corporation, and Cyclops Corporation.

Law Department of United States Steel Corporation (D. B. King, J. J. Mangan, and *L. Ranney)* for plaintiffs United States Steel Corporation.

United States International Trade Commission, Office of the General Counsel (Michael H. Stein, General Counsel; *Warren Maruyama,* attorney) for defendents United States of America and United States International Trade Commission.

Wald, Harkrader and Ross (Christopher Dunn and *Arthur J. Lafave III)* for defendant-intervenors Companhia Siderurgica Paulista (COSIPA), Usinas Siderurgicas de Minas Gerais (USIMINAS), Companhia Siderurgica Nacional (CSN), Acos Villares, S.A., Siderurgica Nossa Senhora Aparecida S.A., Acos Finos Piratini S.A., Companhia Acos Especias Itabira (ACESTIA) and Acos Anhanguera S.A.

WATON, *Judge:* Plaintiffs Republic Steel Corporation, Inland Steel Company, Jones and Laughlin Steel Incorporated, National Steel Corporation and Cyclops Corporation moved on May 2, 1983, and defendant-intervenors Companhia Siderurgica Paulista (COSIPA), Usinas Siderurgicas de Minas Gerais (USIMINAS), Companhia Siderurgica Nacional (CSN), Acos Villares, S.A., Siderurgica Nossa Senhora Aparecida S.A., Acos Finos Piratini S.A., Companhia Acos Especias Itabira (ACESITA) and Acos Anhanguera S.A. moved on May 4, 1983, for access to certain documents in the administrative record that have been designated "business confidential." On May 17, 1983, plaintiff United States Steel Corporation filed an opposition to both of the aforementioned motions for access, objecting to the release of customer names and addresses contained in responses to U.S. International Trade Commission (ITC) questionnaries, and characterizing the intervenors' request for access as premature and overly broad.

The Court is of the view that U.S. Steel Corporation lacks standing to object to the intervenors' motion for access to parts of the administrative record of the Brazilian carbon steel investigations. U.S. Steel was originally a party only to Court No. 82-7-01053, seeking review of the ITC's preliminary negative injury determination involving cold-rolled sheet steel from the Republic of Korea. The Court's subsequent orders consolidating that case with three other actions challenging ITC deteminations with respect to steel from Spain and Brazil did not expand U.S. Steel's status or rights to include them as a party in the appeals of the Spanish and Brazilian determinations. *Johnson* v. *Manhattan Ry. Co.,* 289 U.S. 479, 496-497 (1933); *Katz* v. *Realty Equities Corp. of N.Y.,* 521 F.2d 1354 (2d Cir. 1975).

Nonetheless, U.S. Steel does have a significant interest in maintaining the confidentiality of the customer information it submitted to the ITC during the investigations leading to the various determinations now under review in this consolidated action. Therefore, pursuant to Rule 1(a) of this Court, and under its general powers to transform a motion in the interests of justice, the Court

has entertained U.S. Steel's objection to the release of its customer information, not as a party, but rather as a respondent to the ITC's investigative questionnaries, which has been granted leave to appear specially on the question of customer names and addresses. The Court regards this type of information as particularly sensitive, given the potential for competitive harm to the submitter upon disclosure. Disclosure should be withheld unless particularly justified.

In all other respects, U.S. Steel's opposition will not be entertained.

Accordingly, it is hereby

ORDERED that plaintiffs' and defendant-intervenors' motions for access are hereby granted subject to the following terms and conditions:

1. The Clerk of the Court is directed to take such steps as are necessary to insure that the names and addresses of customers of United States Steel Corporation on the questionnaire responses of United States Steel Corporation are not disclosed.

2. Documents contained in the administrative record filed by the defendant United States International Trade Commission, which have been designated as "business confidential" shall be made available to the attorneys of record for plaintiffs Republic Steel Corporation, Inland Steel Company, Jones & Laughlin Steel Incorporated, National Steel Corporation and Cyclops Corporation at the Courthouse for inspection and copying no later than five working days from the date of entry of this order.

3. The documents identified on the attached appendix shall be made available to William H. Barringer, Christopher Dunn, and Arthur J. Lafave III, attorneys in the law firm of Wald, Harkrader and Ross, counsel for Companhia Siderurgica Paulista (COSIPA), Usinas Siderurgicas de Minas Gerais (USIMINAS), Companhia Siderurgica Nacional (CSN), Acos Villares, S.A., Siderurgica Nossa Senhora Aparecida S.A., Acos Finos Piratini S.A., Companhia Acos Especias Itabira (ACESITA) and Acos Anhanguera S.A. at the Courthouse for inspection and copying no later than five working days from the date of entry of this order.

4. All information not otherwise available in the public portion of the administrative record shall be considered as confidential.

5. The above-described attorneys (hereafter "Attorneys") shall not disclose the information to anyone (including any officer, shareholder, director, or employee of any of the parties in this matter) other than their *immediate* office personnel actively assisting in this litigation, or in administrative proceedings resulting from an order of this Court in this litigation, or in any remand or appeal of this matter. The Attorneys and their immediate office personnel shall neither disclose nor use any of the confidential information for purposes other than this litigation or in administrative proceed-

ings resulting from an order of this Court in this litigation, or in any remand or appeal of this matter.

6. The Attorneys shall cause all office personnel authorized to see the confidential information to sign a statement of acknowledgement that the information is confidential and that such information will not be disclosed to anyone other than authorized personnel.

7. The Attorneys shall not make more than (5) copies of any document that is deemed "Confidential" pursuant to this Order. A record shall be maintained of each copy made, to whom they are provided and when they are returned.

8. Whenever any document subject to the protective order is not being used, it shall be stored in a locked vault, safe, or other suitable container.

9. All such copies shall be clearly marked as containing confidential information and that they are to be returned at the conclusion of this litigation.

10. If counsel for any party wishes to consult with any expert for purposes of evaluating the confidential information, and thus disclose it to such expert, leave therefore must be obtained from the Court by motion (any opposition to which must be served by express mail and filed within five days). Such experts, if approved, shall agree not to disclose the confidential information to anyone other than to the counsel who consulted with them or to that counsel's authorized office personnel, and then for purposes of this litigation only. Any expert so consulted shall first sign a statement submitting himself or herself to the jurisdiction of the U.S. Court of International Trade and to such reasonable sanctions as this Court may deem appropriate in the event of a breach of the conditions of this order.

11. Any documents, including briefs and memoranda, containing any of the confidential information subject to this order, which are filed with the Court in this case or used for any other purpose, shall be conspicuously marked as containing confidential information which is not to be disclosed to the public, and arrangements shall be made with the Clerk of this Court to retain such documents under seal, permitting access only to the Court, Court personnel authorized by the Court to have access, and attorneys of record for the parties. Copies of all the foregoing documents, but the confidential information deleted, shall be filed with the Court at the same time that the documents containing the confidential information are filed.

12. Any briefs or memoranda containing confidential information shall be served on the other parties in a wrapper conspicuously marked on the front "Confidential" and shall be accompanied by a separate copy from which the confidential information has been deleted.

13. Upon conclusion of this litigation, the Attorneys shall return all documents containing confidential information and all copies made of such documents, including any documents or copies held by persons authorized under this order to have access thereto, except for copies which contain work notes of the Attorneys or other authorized persons, which copies shall be destroyed. The return of such documents shall be accompanied by the record required to be maintained under paragraph 7 of this Order, and a certificate executed by an attorney of record attesting that the provisions of this paragraph have been complied with in all respects.

14. Nothing herein shall be deemed to constitute any waiver by the parties of their right to contest the asserted confidentiality of any document.

15. The Attorneys shall promptly report any breach of the provisions of this Order to the Court.

Appendix—List of Documents Accessible to Intervenors Under Judicial Protective Order

The following documents in the Administrative Record to *Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, The Netherlands, Romania, the United Kingdom, and West Germany,* Inv. Nos. 701-TA-86 through 144, 701-TA-146, and 701-TA-147 (Preliminary).

	Date
a. *Confidential* Petition of U.S. Steel for Belgium, West Germany, The Netherlands, United Kingdom, Luxembourg, Brazil, Italy, Spain, and South Africa (82/01/13 757K)	82/01/11
b. *Confidential* Petition of Republic Steel, Inland Steel Corporation and Cyclops Corporation on steel products from foreign countries (82/01/15 790K)	82/01/11
c. Submission filed by Anderson of Cravath Swaine & Moore. *Confidential* being cleared 82-22. Confidential information (82/01/27 1088K)	82/01/26
d. Testimony by Stewart of Stewart. *Confidential.* Being cleared 82-24. Request for confidential treatment of business confidential information	82/02/83
e. Post conference brief and appendix filed by Gold of Cravath, Swaine & Moore on behalf of Republic Steel Corporation. *Confidential.* (82/02/110 221L)/	82/02/09
f. Supplement filed by Stewart of Eugene L. Stewart on behalf of Armco, Inc. *Confidential.* Supplement to testimony of Armco, Inc. at the public conference Feb. 3-4, 1982 regarding hot rolled carbon and alloy bars (82/02/10 236L)	82/02/10
g. Memo Inv-F-016 filed by Fry of Director of Investigations. *Confidential* Memo Regarding Part III of the Staff Report (82/02/22 550L)	82/02/18

h. *Producer's Questionnaires* (in their entirety).

Document No.	Firm
37 (196483)	Ameron Steel and Wire Division.
38 (196484)	Ampco-Pittsburgh Corporation.
39 (196485)	Armco Inc.
40 (196487)	Atlantic Steel Company.
41 (196491)	Baron Drawn Steel Corporation.
42 (196492)	Bethlehem Steel Corporation.
43 (196502)	CF&I Steel Corporation.
44 (196511)	Cyclops Corporation.
45 (196515)	Ford Motor Co. (Steel Division).
46 (196523)	Inland Steel Co.
47 (196525)	Interlake Inc.
48 (196530)	Jones & Laughlin Steel Inc.
49 (196532)	Judson Steel Corporation.
50 (196535)	Keystone Consolidated Industries, Inc.
51 (196538)	LaSalle Steel Company.
53 (196547)	Moltrup Steel Products Company.
54 (196550)	National Steel Corporation.
55 (196553)	Northwestern Steel & Wire Co.
57 (196560)	Phoenix Steel Corp.
58 (196564), (196564) (supp.)	Republic Steel Corp.
59 (196565)	Roanoke Electric Steel Corp.
60 (196570)	Stanadyne, Inc.
61 (196578)	The Timken Company.
62 (196580)	United States Steel Corporation.

i. *Producer's Questionnaires* (Information relating to lost sales only).

Document No.	Firm
52 (196542)	Lukens Steel Company.
56 (196556)	Oregon Steel Mills.

j. *Importer's Questionnaires.*

Document No.	Firm
1 (196384)	Artco Steel Corporation.
6	C. Tennant & Sons, Inc.
9 (196457)	Delta Steel, Inc.
14 (196473)	Honsa World Cargo Service, Inc.
22 (196438)	Mitsubishi International Corp.
25 (596447)	Pan American Trade Development Corporation.
31 (196416)	Thyssen, Inc.

k. Lost sales notes of the Commission investigator (Document No. 128).

(Slip Op. 83-71)

ROQUETTE FRERES AND ROQUETTE CORPORATION, PLAINTIFFS *v.* UNITED STATES, DEFENDANT, and PFIZER, INC., INTERVENOR

Court No. 82-5-00636

Before BOE, *Judge.*

Memorandum Opinion and Order To Remand

(Dated July 18, 1983)

Wald, Harkrader & Ross (*Joel E. Hoffman* and *Marilyn E. Kerst,* of counsel) for the plaintiffs.

J. Paul McGrath, Assistant Attorney General (*David M. Cohen,* Director, Commercial Litigation Branch and *A. David Lafer; William E. Perry,* Office of the General Counsel, International Trade Commission, of counsel) for the defendant.

Barnes, Richardson & Colburn (*E. Thomas Honey,* of counsel) for the intervenor.

Rivkin, Sherman & Levy (*Saul L. Sherman* and *Lance E. Tunick*) attorneys for ICI Americas Inc., *amicus curiae.*

BOE, *Judge:* The defendant has filed a motion requesting that the above-entitled action be remanded to the International Trade Commission for a determination by said Commission in the antidumping investigation involving *Sorbitol From France* that an industry in the United States was materially injured by reason of importation of sorbitol from France being sold at less than fair value. It is further moved that all further proceedings in this action be stayed pending the determination by the ITC on remand.

From its acquaintance to date with the record of the proceedings of the ITC certified for review, this court deems that clarification of the determination of the Commission and the findings on which it is based as well as clarification of the position of the respective members who participated, indeed, is appropriate.

A candid acknowledgment by the defendant in its memorandum in support of its motion that substantial, relevant and material information contained in questionnaires was not included in the Commission's staff report nor in any manner presented to the Commission during the course of the investigation may well serve to explain the considerable variance in the findings and the resulting determinations adopted by the respective Commission members.

To allow the record herein to stand in its present form, absent the substantial relevant information that should have been included in its staff report, and to permit a judicial review of the Commission's determination and its supporting findings made upon an acknowledged incomplete record would be an intolerable micarriage of justice and a blemish upon the review process of administrative determinations.

NOW THEREFORE, it is hereby

ORDERED that the within action be and is hereby remanded to the International Trade Commission to consider in full all relevant information presently in its possession or which hereafter may be

presented to it as to whether an industry was materially injured by reason of imported sorbitol from France being sold at less than fair value. The determination so made by the Commission shall be returned to this court within a period of sixty (60) days from the date of entry of this order.

At such time as may be deemed appropriate by the Commission and prior to the making of its final determination, all respective parties shall be permitted to be heard by the entire Commission and to submit such additional information as may be relevant and material.

Time for the submission of supplemental briefs on review, if desired by respective counsel, will be fixed by the court upon the expiration of the order relating to the stay of proceedings herein.

Upon motion by the plaintiffs, subsequent to the Commission's determination on remand but prior to submission of any briefs or argument on review, this court will again consider plaintiffs' need for access to the confidential documents presently included in the protective order of this court, and it is further

ORDERED that all proceedings in the above action concerning judicial review of the final determination of the International Trade Commission, accordingly, be and are hereby stayed for a period of sixty (60) days in order to allow the Commission to make its determination on remand, and it if further

ORDERED that defendant's response to plaintiffs' motion regarding the final determination of the Department of Commerce, International Trade Administration, shall be filed on or before fifteen (15) days from and after the date of this order.

(Slip Op. 83-72)

SCHAPER MANUFACTURING CO., DIVISION OF KUSAN, INC., PLAINTIFF *v.* THE HONORABLE DONALD T. REGAN, SECRETARY OF THE TREASURY OF THE UNITED STATES, and THE HONORABLE WILLIAM VON RAAB, COMMISSIONER OF CUSTOMS, DEFENDANTS, and THE MILTON D. MYER COMPANY, INTERVENOR

Court No. 83-3-00333

Before BOE, *Judge.*

Order

[Plaintiff's motion for modification of preliminary injunction, denied.]

(Dated July 19, 1983)

Plaia, Schaumberg & deKieffer (*Tom M. Schaumberg* and *Alice A. Kipel* at the oral argument) for the plaintiff.

J. Paul McGrath, Assistant Attorney General; (*Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch and *Deborah E. Rand* at the oral argument), for the defendants.

Buell, Blenko, Ziesenheim & Beck (*Lynn J. Alstadt* at the oral argument), for the intervenor.

BOE, *Judge:* The plaintiff having filed a motion for modification of the preliminary injunction granted in the above-entitled action by this court under date of March 21, 1983, by:

1. Requiring the U.S. Customs Service to reduce the bond covering Customs Entry 82-807044-5 to the value of the allegedly non-piratical goods;
2. Requiring Customs to return to Schaper its bonds covering Customs Entries 83-800566-6 and 83-800602-7; and
3. Enjoining Customs from liquidating Customs Entry 82-807044-5 entered at the Port of Pittsburgh, Pennsylvania, and

The court having considered the briefs submitted by respective counsel and at oral argument held on July 18, 1983, having heard the arguments of counsel, and

The court having presented orally in open court its opinion and decision with respect to plaintiff's motion which said statement of opinion and decision is a part of the official record in this proceeding and, accordingly, is made a part hereof by this reference, and

It appearing to the satisfaction of the court that:

1. No sufficient showing has been made by the plaintiff that failure to grant the modifications sought in its motion will result in immediate irreparable injury to the plaintiff, and
2. The plaintiff has failed to show wherein the modifications sought in its motion are required to preserve the status quo of the within action as maintained by the preliminary injunction previously granted by this court, and
3. The modifications sought by the plaintiff in its present motion and over which this court has jurisdiction, are, in fact, matters constituting the very subject of this action and, accordingly, are properly determined at such time as the within cause of action is tried on the merits.

NOW THEREFORE, it is hereby

ORDERED that the motion of the plaintiff for modification of the preliminary injunction granted by this court under date of March 21, 1983, be and is hereby denied.

(Slip Op. 83-73)

UNITED STATES STEEL CORPORATION, REPUBLIC STEEL CORPORATION, ET AL., PLAINTIFFS *v.* UNITED STATES, ET AL., DEFENDANTS, and COMPANHIA SIDERURGICA PAULISTA (COSIPA), AND USINAS SIDERURGICAS DE MINAS GERAIS (USIMINAS), DEFENDANTS-INTERVENORS

Consolidated Court No. 82-10-01361

Before WATSON, Judge.

ITA Suspension of Investigation

The Court upholds the determination by the ITA to suspend a countervailing duty investigation of carbon plate steel from Brazil based on an agreement by Brazil to use an export tax to offset the subsidies found to exist.

[Administrative determination affirmed.]

(Decided July 20, 1983)

Law Department of United States Steel Corporation (*Leslie Ranney, Peter Koenig* of counsel) for plaintiff United States Steel Corporation.

Cravath, Swaine & Moore (*Joseph R. Sahid, Steven Schulman* of counsel) for plaintiffs, Republic Steel Corporation, Inland Steel Company, Jones & Laughlin Steel Incorporated, National Steel Corporation, and Cyclops Corporation.

J. Paul McGrath, Assistant Attorney General, *David M. Cohen,* Branch Director, Civil Litigation Branch; (*Velta A. Melnbrencis, Francis J. Sailer, A. David Laser,* Attorneys, Civil Litigation Branch) for defendants United States, *et al.*

Wald, Harkrader & Ross (*William H. Barringer, Arthur J. Lafave II* of counsel) for Defendants-Intervenors Companhia Siderurgica Paulista (COSIPA) and Usinas Siderurgicas de Minas Gerais (USIMINAS).

WATSON, *Judge:* In this phase of the action, plaintiffs seek judicial review of a decision by the International Trade Administration of the Department of Commerce (ITA) to suspend a countervailing duty investigation of carbon plate steel from Brazil.[1] At the time of its suspension the investigation had preliminarily identified five subsidy programs.[2]

In particular, plaintiffs challenge the agreement between the government of Brazil and the Department of Commerce, which supplied the basis for suspending the investigation, and in which Brazil agreed to offset (by means of an export tax) the amounts determined to be subsidies.[3]

The Court has jurisdiction of the action under 19 U.S.C. § 1516a(a)(2)(A)(i). Under 19 U.S.C. § 1516a(b) the Court reviews the administrative record and is required to hold unlawful any determination not supported by substantial evidence or not in accordance with the law.

Plaintiffs allege that the ITA did not comply with the notice, consultation, and other procedural requirements of section 704(e),

---

[1] *Carbon Steel Plate From Brazil; Suspension of Investigation,* 47 Fed. Reg. 39,394 (1982).

The investigation was started on February 1, 1982, 47 Fed. Reg. 5,751 (1982). In March, it was determined to be "extraordinarily complicated" within the meaning of 19 U.S.C. § 1671b(c) and the preliminary determination of whether there was a reasonable basis to believe or suspect that a subsidy was being provided was postponed. 47 Fed. Reg. 11,738 (1982). In June, a preliminary subsidy determination was made. 47 Fed. Reg. 26,310 (1982). *See* note 2 *infra.* Following the suspension challenged in this action, the investigation was continued at plaintiffs' request under section 704(g) (19 U.S.C. § 1671c(g) and resulted in a final countervailing duty determination (48 Fed. Reg. 2,568 (1983)) which, in accordance with section 704(f)(3) (19 U.S.C. § 1671c(f)(3)), left the suspension of the investigation unaffected and the agreement in force.

[2] The ITA's preliminarily determination in June found that Brazil was providing subsidies under three programs, and effective June 17, 1982, the United States Customs Service was directed to suspend liquidation of entries of carbon steel plate from Brazil and to require a cash deposit or bond in the amount of 8.58 percent of the f.o.b. value. 47 Fed. Reg. 26,310 (1982). Subsequently (in the Notice of Suspension of Investigation) a fourth program was found to be a subsidy, 47 Fed. Reg. 39,394 (1982). A fifth program (income tax exemption for export earnings) which was placed within the coverage of the suspension, was found to be in existence, but was not used by the producers during the period of the investigation. 48 Fed. Reg. 2,573 (1983).

[3] The agreement was published as *Annex* I to the Notice of Suspension of Investigation, 47 Fed. Reg. 39,395 (1982).

of the Tariff Act of 1930, (19 U.S.C. § 1671c(e)).[4] Plaintiffs also allege that the agreement does not meet the statutory requirements that it offset completely the amount of the net subsidy, that it be effectively monitorable and that it be in the public interest.[5]

After reviewing the record, reading the briefs and hearing oral argument, the Court has not been persuaded that the ITA determination to suspend the investigation was unlawful or lacking in substantial evidence. Stated differently, the Court finds that the terms of the agreement, and the manner in which it was entered into, were in compliance with the statute and support the decision to suspend the investigation.

On the procedural question the Court finds that, although things were done in a somewhat rushed manner at the last minute, the timing satisfied the law and, as a practical matter, the parties' procedural rights were not meaningfully affected.

The essentials were satisfied by telephone notifications, and explanations and delivery of copies of the agreement by July 23, 1982, which was no less than 30 days prior to the August 24th issuance of the notice of suspension.[6] The nature of the agreement was such that elaborate explanation was not needed, especially to lawyers whose minds had been developed to an extraordinary keenness by prolonged exposure to the Trade Agreements Act of 1979. In all, it can be fairly stated that no party was prevented from having its say. Although in general the ITA might be wiser to be more generous in the timing and extent of its notification and consultation procedures, the Court cannot say that its conduct was unlawful.

The Court now turns to the agreement which is at the center of this dispute. The agreement provides that the Department of Commerce (the Department) will suspend its countervailing duty investigation on the basis of Brazil's agreement to "offset completely the amount of the net subsidy determined by the Department to exist with respect to the subject product." This is to be done by means of

---

[4] 19 U.S.C. § 1671c(e)

(e) *Suspension of investigation procedure.* Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) Notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) Provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced (including any action required of foreign governments), and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d), and

(3) Permit all parties to the investigation to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

[5] The Court has previously held that the standard of review here is whether all of these factors are supported by substantial evidence. *United States Steel Corp., et al.* v. *United States*, 4 CIT—, Slip Op. 82-117 (Dec. 20, 1982). *See* note 8 *infra*, for text of statutory requirements.

[6] A minor difference of opinion has developed between the plaintiffs and defendant-intervenors on the question of what exactly is the date on which the ITA suspends the investigation (no less than thirty days before which the ITA has to notify petitioners and other interested parties of its intent to suspend the investigation, consult with petitioner and supply it with a copy of the proposed agreement and an explanation). For the purpose of allowing the longest possible period for *meaningful* consultation and comment and because the period between the actual issuance of the ITA determination and its publication cannot be considered as receptive to change as the 30 days prior to the issuance, it is better to use the earlier date on which the ITA issues its notice rather than the date of publication. This is taken to conform to the Congressional intent more closely.

an export tax levied on the exported steel. Brazil agrees not to substitute other benefits for those offset by the agreement and agrees to notify the Department of any changes in benefits to the products involved or in the rate of the export tax or of any decision to alter or terminate its obligations under any of the terms of the agreement. Brazil also agrees to certify at three-month intervals "whether it continues to be in compliance with the agreement by offsetting the net subsidy" and "whether it has substituted any new or equivalent benefits for the benefits offset by the agreement." Brazil further agrees to supply to the Department such information as the Department deems necessary to demonstrate that it is in compliance with the agreement and to permit such verification and data collection as is requested by the Department in order to monitor the agreement. The agreement states that the Department will request information and conduct verification under section 751, (19 U.S.C. § 1675) [7] and that if a determination is made that the agreement has been or is being violated or no longer meets the requirements of sections 704(b) or (d) (19 U.S.C. § 1671c(b) or (d)),[8] then the

[7] **§ 1675. Administrative review of determinations.**

(a) *Periodic review of amount of duty.*

(1) *In general.* At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this title [19 U.S.C. §§ 1671 et seq.] or under section 303 of this Act [19 U.S.C. § 1303], an antidumping duty order under this title [19 U.S.C. §§ 1671 et seq.] or a finding under the Antidumping Act, 1921 [19 U.S.C. §§ 160 et seq.], or a notice of the suspension of an investigation, the administering authority, after publication of notice of such review in the Federal Register, shall—

(A) Review and determine the amount of any net subsidy,

(B) Review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and

(C) Review the current status of, and compliance with, any agreement by reason of which an investigation was suspended,

and review the amount of any net subsidy or margin of sales at less than fair value involved in the agreement, and shall publish the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited or investigation to be resumed in the Federal Register.

* * * * * * *

[8] **§ 1671c. Termination or suspension of investigation**

* * * * * * *

(b) *Agreements to eliminate or offset completely a subsidy or to cease exports of subsidized merchandise.* The administering authority may suspend an investigation if the government of the country in which the subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the merchandise which is the subject of the investigation agree—

(1) To eliminate the subsidy completely or to offset completely the amount of the net subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or

(2) To cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

* * * * * * *

(d) *Additional rules and conditions.*

(1) *Public interest; monitoring.* The administering authority shall not accept an agreement under subsection (b) or (c) unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

(2) *Exports of merchandise to United States not to increase during interim period.* The administering authority may not accept any agreement under subsection (b) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

* * * * * * *

provisions of section 704(i) (19 U.S.C. § 1671c(i)) shall apply.[9]

In essence, the substantive objections of plainiffs take the form of a complete rejection of the use of an export tax and the anticipation of both avoidance of the agreement by Brazil and shortcomings in the enforcement of the agreement by the ITA.

Plaintiffs argue that because Brazil owns COSIPA and USIMINAS and has a strong national interest in the encouragement of its steel industry, it is an inherently unsuitable custodian of the funds to be generated by the export tax. This argument simply indicates plaintiffs' suspicion that Brazil will try to return the export tax to the taxpayers by any means. To the extent that this argument assumes an evasive intent on the part of Brazil it cannot be entertained. The same argument would doom even the complete termination of the subsidy because the funds would still be in the hands of the Brazilian government and subject to manipulation. The good faith of the parties to these agreement must be accepted. In any event, an agreement cannot be faulted for being avoidable by deception and evasion.

To the extent that this argument relies on a legal objection to the use of export-tax offsets when the exporter is owned by the government, the argument is not supported by the law. The language of the statute does not make that distinction, the legislative history does not suggest it, and the force of logic does not require it. The law respects the separation of corporations from their stockholders unless there is good reason to find otherwise. In this context, reason means factual support, not motive alone. The genuineness of the separation between the corporation and the government

---

[9] (i) *Violation of agreement.*

(1) *In general.* If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) Suspend liquidation under section 703(d)(1) [19 U.S.C. § 1671b(d)(1)] of unliquidated entries of the merchandise made on or after the later of—

(i) The date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) The date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

(B) If the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 703(b) [19 U.S.C. § 1671b(b)] were made on the date of its determination under this paragraph,

(C) If the investigation was completed under subsection (g), issue a countervailing duty order under section 706(a) [19 U.S.C. § 1671e(a)] effective with respect to entries of merchandise the liquidation of which was suspended, and

(D) Notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) *Intentional violation to be punished by civil penalty.* Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedure, as the penalty imposed for a fraudulent violation of section 592(a) of this Act [19 U.S.C. § 1592(a)].

[10] 19 U.S.C. § 1677

(6) *Net subsidy.* For the purpose of determining the net subsidy, the administering authority may subtract from the gross subsidy the amount of—

(A) Any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the subsidy,

(B) Any loss in the value of the subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) Export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

stockholder and the bona fides of transactions between them is for the ITA to decide. Those decisions will be upheld unless they are lacking in substantial evidence or legally deficient.

There is no doubt that if an export tax had been in place prior to the investigation, the offset would have reduced the amount of the gross subsidy. That would have been the result of the application of section 771(6)(C) (19 U.S.C. § 1677(6)(C)) in which export taxes specifically intented to offset the subsidy received are listed as deductions.[10] It is therefore difficult to comprehend why such offsets should not figure prominently among the offsets which justify suspension of the investigation under section 704(b) (19 U.S.C. § 1675(b)).

Finally, the existence of state-owned corporations in free market economies it too well to believe that Congress intended special treatment for them without mentioning it, specifically to preclude the use of offsets. Congress was not hesitant to provide differential treatment for special situations involving multinational corporations and enterprises operating in state-controlled economies under the Antidumping Act of 1921, as amended, 19 U.S.C. § 1677b (c) and (d). In sum, we do not have here a self-evident flaw or definite anomaly in the law which has to be interpreted away reference to a larger and overriding measure of Congressional intention.

Plaintiffs also complain that the agreement does nothing to prevent the return of the export tax to these companies by means of equity infusions, i.e., government purchases of stock. Plaintiffs point out that the ITA has already determined in this investigation that certain equity infusions were not subsidies.[11] Nevertheless, it still remains within the authority of the ITA to find, under this agreement, that future infusions have the practical effect of providing a benefit which substitutes for the subsidies offset by the agreement.[12] This involves the provision in the agreement in which Brazil agrees not to provide substitute benefits and leads into a discussion of plaintiffs' related objections.

Plaintiffs have fixed on the ban on "substitute" benefits as a sign of the agreement's failure to accomplish the statutory objectives because it does not reach all "new" subsidies and involves the ITA in impossible detection and determination of the intent of future benefits.

---

[10] 19 U.S.C. § 1677

(6) *Net subsidy.* For the purpose of determining the net subsidy, the administering authority may subtract from the gross subsidy the amount of—

(A) Any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the subsidy,

(B) Any loss in the value of the subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) Export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

[11] That determination is under judicial review in another phase of this action.

[12] In the final determination referred to in note 1 *supra*, the rebate of a value-added tax under Decree Law 1547, which eventually enlarged the government's equity share of the producers, was found to be a subsidy. 48 Fed. Reg. at 2,570 (1983).

When the agreement states its coverage of "substitute" subsidies it goes exactly as far as it has to go under the law, and probably as far as it can go. If the agreement purported to bar all future subsidies it might be an unjustified interference with the right of a country to subsidize, which is recognized in the Agreement on Interpretation and Application of Articles VI, XVI, and XXXIII of the General Agreement on Tariffs and Trade (Relating to Subsidies and Countervailing Measures), approved under section 2(a) of the Trade Agreements Act of 1979 (19 U.S.C. § 2503(a)).

When the agreement speaks to substitute subsidies, it must refer to those later benefits which have the practical effect of restoring offset subsidies in whole or in part. Lack of intent to substitute is irrelevant, so plaintiffs' concern with the agency necessarily becoming involved in the intricacies of determining intent is excessive. The decision as to what is or is not a substitute is for the ITA to make and, while it is impossible to predict all the factors which may enter into such a decision, it is safe to say that the agreement insures that the ITA will have sufficient data to make an informed decision.

Plaintiffs' further concern that the agency will not be able to detect benefits which Brazil does not report is not a defect of monitoring. That would be a plain violation of the agreement which is not to be assumed. In addition, the ITA's general investigatory powers have to be considered sufficient to find such violations, if they occur, and respond appropriately. The provisions for monitoring are sufficient to allow the ITA to receive or demand all the information it needs to perform its duties and the proper performance of those duties is presumed.

Plaintiffs have forcefully conveyed their lawyerly premonitions of disaster. They have presented a number of scenarios in which various substituted or increased benefits escape being offset even when the ITA is informed about them. According to plaintiffs, it is possible for Brazil to anticipate the offset much as a donor can anticipate a gift tax and include it in the gift. In the opinion of the Court, the normal and proper operation of this agreement will not permit such or similar avoidances because the export tax does not remain a predictable constant. It must be adjusted promptly and accurately to reflect changes in benefits. Under the agreement, the ITA should have the information needed to accomplish adjustment and the agreement contemplates that it will be done expeditiously.

Beyond all this, if disputes arise as to whether certain benefits are substitutes for offset subsidies or whether the export tax is being properly adjusted, the possibility of judicial review may be foreseen in appropriate circumstances.

The Court also holds that there was substantial evidence to find that the suspension of this investigation was in the public interest. This can be expected to be the norm if the agreement satisfies the

statutory criteria and no other important considerations have been overlooked.

In sum, the Court is of the opinion that this agreement cannot be avoided short of outright deception, incompetence or unlawful conduct—none of which can be assumed, and all of which are likely to be remediable administratively or judicially. The agreement leaves plaintiffs as secure as they can be in a changing world.

For these reasons, the Court finds that there was substantial evidence for the ITA's determination to suspend its investigation of carbon steel plate from Brazil. Its conduct was lawful and the agreement it entered into complied with the requirements of the law. Accordingly, the ITA's determination to suspend the investigation is affirmed.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *July 21, 1983.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary here given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate		
P83/208	Landis, J. July 14, 1983	E. Gluck Corp.	81-12-01777	Items 715.05 (716.14/716.18) (modules), 720.24 or 720.28 (cases) and 740.35 (bands) Various rates	Item 688.36 (merchandise marked "A") 5.5%, 5.3%, 5.1% or 4.9% Item 656.25 (merchandise marked "B" plated with gold) 25%, 23.1%, 21.3% or 19.4% Item 657.35 (merchandise marked "B" brass c.v.) .6¢ per lb. + 7.5%, 7.4%, 7.0% or 6.7% Item 657.20 (merchandise marked "B" steel c.v.) 9.5%, 9.0%, 8.6% or 8.1% Item 656.20 (merchandise marked "B" coated or plated with palladium) 16%, 14.9%, 13.9% or 12.8%	Agreed statement of facts	New York Electronic LCD watches

P83/209	Landis, J. July 14, 1983	E. Gluck Corp. a/k/a Armitron Corp.	82-1-00113	Items 715.05 (716.14/716.18) (modules), 720.24 or 720.28 (cases) and 740.35 (bands) Various rates	Item 688.36 (merchandise marked "A") 5.5%, 5.3%, 5.1% or 4.9% Item 656.25 (merchandise marked "B" plated with gold) 25%, 23.1%, 21.3% or 19.4% Item 657.35 (merchandise marked "B" brass c.v.) .6¢ per lb. + 7.5%, 7.4%, 7.0% or 6.7% Item 657.20 (merchandise marked "B" steel) 9.5%, 9.0%, 8.6% or 8.1% Item 656.20 (merchandise marked "B" coated or plated with palladium) 16%, 14.9%, 13.9% or 12.8%	Agreed statement of facts	New York Electronic LCD watches

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate		
P83/210	Boe, J. July 14, 1983	E. Gluck Corp.	81-1-00068	Item 715.05 Various rates (modules) Item 720.24 or 720.28 Various rates (cases) Item 740.35 Various rates (bands)	Item 688.36 5.5%, 5.3%, 5.1% or 4.9% (merchandise marked "A") Item 656.25 25%, 23.1%, 21.3% or 19.4% (merchandise marked "B" plated with gold) Item 657.35 .6¢ per lb. + 7.5%, 7.4%, 7.0% or 6.7% (merchandise marked "B" brass c.v.) Item 657.20 9.5%, 9.0%, 8.6% or 8.1% (merchandise marked "B" steel) Item 656.20 16%, 14.9%, 13.9% or 12.8% (merchandise marked "B" coated or plated with palladium)	Agreed statement of facts	New York Electronic LCD watches

P83/211	Boe, J. July 14, 1983	E. Gluck Corp. a/k/a Armitron Corp.	81-10-01405	Item 715.05 Various rates (modules) Item 720.24 or 720.28 Various rates (cases) Item 740.35 Various rates (bands)	Item 688.36 5.5%, 5.3%, 5.1% or 4.9% (merchandise marked "A") Item 656.25 25%, 23.1%, 21.3% or 19.4% (merchandise marked "B" plated with gold) Item 657.35 .6¢ per lb. + 7.5%, 7.4%, 7.0% or 6.7% (merchandise marked "B" brass) Item 657.20 9.5%, 9.0%, 8.6% or 8.1% (merchandise marked "B" steel c.v.) Item 656.20 16%, 14.9%, 13.9% or 12.8% (merchandise marked "B" coated or plated with palladium)	Agreed statement of facts	New York Electronic LCD watches

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate		
P83/212	Boe, J. July 14, 1983	E. Gluck Corp.	81-10-01448	Item 715.05 (modules) Various rates Item 720.24 or 720.28 (cases) Various rates Item 740.35 (bands) Various rates	Item 688.36 5.5%, 5.3%, 5.1% or 4.9% (merchandise marked "A") Item 656.25 25%, 23.1%, 21.3% or 19.4% (merchandise marked "B" plated with gold) Item 657.35 .6¢ per lb. + 7.5%, 7.4%, 7.0% or 6.7% (merchandise marked "B" brass c.v.) Item 657.20 9.5%, 9.0%, 8.6% or 8.1% (merchandise marked "B" steel c.v.) Item 656.20 16%, 14.9%, 13.9% or 12.8% (merchandise marked "B" coated or plated with palladium)	Agreed statement of facts	New York Electronic LCD watches
P83/213	Re, C.J. July 18, 1983	Electronic Arrays, Inc.	80-2-00328	Item 716.05 Not stated Item 720.75 Not stated	Item 688.40 5.5% Item 687.60 6%	Agreed statement of facts	San Francisco Watch modules and watch integrated circuits
P83/214	Re, C.J. July 18, 1983	Electronic Arrays, Inc.	81-10-01778	Item 716.05 Not stated Item 720.75 Not stated	Item 688.40 5.5% Item 687.60 6%	Agreed statement of facts	San Francisco Watch modules and watch integrated circuits

P83/215	Re, C.J. July 18, 1983	Litronix, Inc.	79-7-01177	Item 716.05 Not stated Item 720.40 Not stated	Item 688.40 5.5% Item 685.70 4%	Agreed statement of facts	San Francisco Watch modules and watch displays
P83/216	Landis, J. July 18, 1983	Arthur J. Fritz & Co.	81-11-01569	Item 184.75 8% or 7.5% Item 184.85 5.2% or 3%	Item 187.47 Free of duty	Norman G. Jensen v. U.S. 2 CIT 198 (1981)	Blaine (Seattle) Grain screenings pellets
P83/217	Landis, J. July 18, 1983	Arthur J. Humphreys, Inc.	81-10-01370	Item 184.75 8% or 7.5% Item 184.85 5.2% or 3%	Item 187.47 Free of duty	Norman G. Jensen v. U.S. 2 CIT 198 (1981)	Blaine (Seattle) Grain screenings pellets
P83/218	Landis, J. July 18, 1983	Exquisite Form Industries, Inc.	82-2-00227	Item 376.24 32%	Item 376.28 18%	Agreed statement of facts	New York Body supporting garments
P83/219	Landis, J. July 18, 1983	Signetics Corp.	78-6-01007	Item 697.60 6%	Item 807.00 With an allowance in duty based upon full value of merchandise less cost or value of prefabricated die of U.S. origin	U.S. v. Texas Instruments, Inc. (C.A.D. 1178)	San Francisco American goods returned; integrated circuits which consist of U.S. fabricated components
P83/220	Landis, J. July 18, 1983	Sterncomco, Inc.	81-10-01371	Item 184.75 8% or 7.5% Item 184.85 5.2% or 3%	Item 187.47 Free of duty	Norman G. Jensen v. U.S. 2 CIT 198 (1981)	Lynden (Seattle) Grain Screenings pellets

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/503	Re, C. J. July 18, 1983	American Import Co.	73-11-03096	Export value	Appraised values specified on entry papers by liquidating officer, less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	San Francisco Not stated
R83/504	Watson, J. July 18, 1983	Lipmans Imports, Inc.	277954A	Export value	F.o.b. unit invoice prices, plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Galv. plumbing supplies

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/505 [amends decision and judgment of March 10, 1983, R83/294]	Boe, J. July 18, 1983	Perkin Elmer Corp.	78-12-02266	Export value	Invoice unit prices, net, packed or invoice unit prices plus percentages or additions for packing representing correct dutiable value—said prices represent exporter's list prices less 35% discount	Agreed statement of facts	New York Electrical instruments and accessories

Index

U.S. Customs Service

U.S. GOVERNMENT PRINTING OFFICE : 1983 O - 410-724

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE AND FEES PAID
DEPARTMENT OF THE TREASURY (CUSTOMS)
(TREAS. 552)

CB SERIA300SDISSDUE014R 1 **
SERIALS PROCESSING DEPT **
UNIV MICROFILMS INTL **
300 N ZEEB RD **
ANN ARBOR MI 48106 **